DIVISIONAL FOREST OFFICE
Inwd. Regr. No. 20
Date 22-4-99
WORKING PLANS PARTY II

No 76

DIVISIONAL FOREST OFFICE
SOUTHERN CIRCLE
WORKING PLANS PARTY II

STAMPS.

I.—Reports and Returns.

1. The Stamp Revenue Administration Report of the Bombay Presidency should be forwarded to the Government of India as soon as possible after the expiration of the year to which it appertains. (G. I., F. D., No. 421, dated 22nd January 1876; *vide* G. R. No. 747, dated 3rd February 1876.)

2. The Superintendent of Stamps should submit his report on the Administration of the Stamp Department in future triennially, statistical tables with brief notes being submitted by him in the intermediate years. (G. R. No. 7691, dated 10th November 1887.)

3. The Report of the Inspector General of Registration and Stamps on the stamp inspection work performed by the officers of the Registration Department should be submitted to Government triennially through the Superintendent of Stamps. (G. Rs. Nos. 2186, dated 13th April 1875, and 1307, dated 24th February 1888.)

4. The statistics of Revenue and Charges on account of stamps required for incorporation in Part III of the Finance and Revenue Accounts and miscellaneous statistics relating to the finances of British India should be furnished by the Accountant General, as soon after the close of the year to which they relate as possible, in the following forms :—

Account No.

Total Receipts and Charges on account of stamps for from :—

Year.	Receipts.			Charges.				Net Receipts.	Cost of general supervision.
	Judicial Stamps.	Non-judicial Stamps.	Total.	Discount and Establishment for sale of Stamps.	Refunds.	Other* Charges.	Total.		

* Exclusive of the cost of general supervision.

Account No.

Details of Receipts and Charges under Judicial Stamps for from :—

Year.	Receipts.					Charges.			Total.
	From sale of Court-fee Stamps.	From sale of Stamps for copies.	From sale of plain paper used with labels.	Miscellaneous Receipts.	Total.	Discount and Establishment for sale of Stamps.	Refunds.	Other† Charges.	

† Exclusive of the cost of general supervision.

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Account No.

Details of Receipts and Charges under Non-Judicial Stamps for from :—

Year.	RECEIPTS.								CHARGES.			
	Impressed Stamps.	Impressed Labels.	Hundis or Inland Bills of Exchange.	One-anna Receipt Stamps.	Foreign Bills.	Other Stamps.	Miscellaneous Receipts.	Total.	Discount and Establishment for sale of Stamps.	Refunds.	Other* Charges	Total.

* Exclusive of the cost of general supervision.

Account No.

Details of Charges under Stamps not shown in the preceding tables:—

Year.	Pay of Superintendent.	Establishment.	Contingencies.	Service Postage Stamps.	Total.

(2) In the first form all sorts of receipts and charges (except cost of general supervision) including fines and penalties under the Stamp and Court Fees Acts should be shown in the respective columns provided for them. The columns under charges may be filled up with the most reliable materials.

(3) As the system of levying copying fees by means of stamps has not been introduced in Bombay, the column "From sale of stamps for copies" will necessarily remain blank.

(4) The total of charges under stamps not included in the first three forms is to be given in the last money column of the first form. (G. I., F. & C., Nos. 929, dated 17th May 1883, 354, dated 18th January 1884, and 255, dated 18th January 1888; *vide* G. Rs. Nos. 2302, dated 17th March 1884, 820, dated 6th February 1888, and 6335, dated 6th September 1890.)

II.—POWERS OF OFFICERS.

1. In exercise of the power conferred by Section 3, clause 7 of the Indian Stamp Act, 1879, His Excellency the Governor in Council is pleased to appoint the Superintendent of Stamps, Bombay, to be the Chief Controlling Revenue Authority for the purposes of that Act within the limits of the Town of Bombay. (G. N. No. 1766, dated 2nd April 1879.)

2. The Superintendent of Stamps is authorized to write off to profit and loss the value of postage, receipt and bill stamps, destroyed or damaged, up to Rs. 100. (G. Rs. Nos. 1613, dated 27th April 1864, and 1732, dated 1st May 1868.)

3. He is also authorized to write off the value of stamped papers and other adhesive stamps, damaged or destroyed, to the extent of Rs. 100. Above that amount the consent of Government must be obtained. (G. R. No. 127, dated 9th January 1879.)

4. He is permitted to make such budget provision as is estimated to be necessary to meet the cost of punches required for supply to officers. (G. R. No. 474, dated 17th January 1893.)

5. The First Assistant to the Political Resident, Aden, the Assistant Superintendent of Stamps, Bombay, and, in the absence of the latter, the officer next to him, are authorized to perform the duty prescribed by Rule 11 (*b*) of the rules laid down in the notification of the Government of India No. 2170, dated 22nd May 1891, (Government Notification No. 3626,* dated 27th idem.) (G. Rs. Nos. 3326, dated 23rd May 1888, and 4041, dated 20th June 1888.)

* Printed at pp. 314 *et seq.* of the Compilation of General Rules.

6. The impounding of an instrument is an important step to take, and an officer should exercise the power of impounding only when it is clear to himself that the instrument is not duly stamped. If he is not quite sure as to the proper amount chargeable, he ought not to impound, but refer the question. (L. R. No. 1425, dated 1st December 1881; *vide* G. R. No. 7650, dated 17th idem.)

7. The Stamp Act does not contain any provision for an appeal from the Commissioner's decision passed under Section 45 of the Act, but the Commissioner can, if he sees fit, refer the case to the High Court instead of passing a decision himself. (L. R. No. 1425, dated 1st December 1881; *vide* G. R. No. 7650, dated 17th idem.)

III.—SUPERVISION AND INSPECTION.

1. All officers are to understand that loss of stamp revenue, which can be traced to the want of supervision on the part of any officer, will result in his being held responsible for such loss. (G. R. No. 2122, dated 3rd April 1877.)

2. The attention of all officers who are charged with the supervision of the stamp revenue is particularly directed to the necessity of using the utmost vigilance to see that the provisions of the Stamp Act are fully and invariably carried out. (G. R. No. 5725, dated 20th September 1877.)

3. While the income from court-fee stamps is not so much under the control of the Revenue Officers, the income from general stamps is much more under their control, for if they are vigilant then the law is but little evaded and the income rises: if they are not vigilant, then there is much evasion and the income falls. The Governor in Council is confident that this consideration will be an incentive to vigilance and strictness on the part of all the Revenue Officers concerned. (G. R. No. 4357, dated 27th August 1878.)

4. The true preventive of frauds in the matter of court-fee stamps rests in careful and constant supervision by heads of offices. Any carelessness or perfunctory performance of this very important duty will be seriously noticed by Government. (G. R. No. 3719, dated 24th July 1878.)

5. The attention of presiding officers of each Court or office is to be drawn to Section 33 of the Indian Stamp Act, 1879, with a view to strict observance of its provisions. (G. I., F. & C., No. 3265, dated 15th October 1880; *vide* G. R. No. 6103, dated 18th November 1880.)

6. His Excellency the Governor in Council is pleased to appoint the Inspector General of Registration and the Inspectors under him to the duty of supervising the stamp revenue administration beyond the limits of the Town and Island of Bombay. The designation of these officers will for the future be respectively Inspector General of Registration and Stamps and Inspectors of Registration and Stamps.

The following rules are laid down for their guidance in the performance of these additional duties:—

(1) The Inspector General of Registration and Stamps shall visit the various Huzúr Treasuries and examine the stocks of stamps to see that they are correct in amount as per the stamp accounts, that the latter are kept according to the prescribed form, that proper accommodation is provided for the safe custody of the stamps, and that the supply is sufficient for the wants of the public. Any remarks the Inspector General may have to offer on the above points he shall communicate to the Collector concerned.

(2) The Inspectors of Registration Offices and Stamps shall in the same way visit and examine the stocks of stamps and stamp accounts at the various Mámlatdárs' and Mahálkaris' Treasuries in their respective divisions. Any remarks which the Inspectors may have to offer on matters noticed by them at their examinations shall be forwarded by them to the Inspector General, who, if it appears necessary, will bring the matter to the notice of the Collector concerned.

(3) The Inspector General shall report to the Superintendent of Stamps, with his opinion thereon, any cases coming to his knowledge under the Stamp Laws which appear to have been decided by one authority in one way and by another authority in another way. The Superintendent of Stamps shall submit these cases to Government for final orders.

(4) The Inspectors shall report to the Inspector General any cases coming to their knowledge under the Stamp Laws which appear to have been decided by one authority in one way and by another authority in another way. The Inspector General shall submit these cases, with his opinion, to the Superintendent of Stamps, to be dealt with as laid down in the preceding rule.

(5) Any complaints made by the public regarding the paucity of stamp vendors in any of the districts, and made either personally to the Inspector General or to him through the Inspectors, shall at once be brought by the Inspector General to the notice of the Collector concerned.

(6) Any cases of evasion of the Stamp Laws which come to the notice of the Inspector General or Inspectors shall promptly be reported, in the case of the Inspectors through the office of the Inspector General, to the Collector concerned.

(7) It shall be the duty of the Inspector General and his Inspectors on the requisition of a District Judge, Collector or Magistrate, to arrange at their convenience for the examination of the records of the Courts of such officers and of those subordinate to them, with a view to ascertain whether the court-fee stamps required by law to be affixed on the several documents have been duly cancelled. (G. R. No. 5689, dated 26th October 1874.)

7. As the Superintendent of Stamps has neither the leisure nor the requisite establishment to enable him to examine the records of Government offices with the view of ascertaining whether the law and rules regarding the use of proper stamps and their cancellation are strictly observed and whether there is any fraudulent use of stamps, the Inspector General of Registration and Stamps and his department should carry out this duty in Bombay as elsewhere in the Presidency. (G. R. No. 6462, dated 30th August 1883.)

8. That all Revenue and Judicial Officers in the Mofussil should avail themselves of the services of Stamp Inspectors in accordance with the provisions of Rule 7 of the rules issued with Government Resolution No. 5689, dated 26th October 1874. (G. R. No. 4797, dated 7th August 1877.)

9. It should be understood that it is a part of the duties of the Registration Department to search the records of all offices for evidence of a fraudulent use of stamps. (G. R. No. 3782, dated 26th July 1878.)

10. As regular inspections are necessary for the prevention of fraud and negligence in the use of stamps and in rendering accounts of stamp stocks, the inspecting officers of the Registration Department should so arrange their tours, consistently with their other duties, as to bring all depôts and offices under inspection within as short a period as possible. With a view to enable Government to judge how far these instructions are carried out, the Inspector General of Registration and Stamps should append to his annual Stamp Inspection Report a statement showing the amount of stamp inspection work performed and remaining to be performed in each district. (G. R. No. 7723, dated 4th November 1882.)

11. The Inspector General of Registration and Stamps and the Inspectors of the Registration Department are authorized to call upon licensed stamp vendors to produce not only the stocks of stamps in their hands, but also their account books, with a view to more effectually ascertaining, from a reference to past sales, whether the supplies in hand may be reasonably deemed to be sufficient. (G. R. No. 4381, dated 3rd August 1875.)

12. District Registrars should take steps to give due effect in their respective charges to the orders regarding the periodical examination of stamp-vendors' accounts and stocks contained in paragraph 11* of the remarks on Form No. 17 at page 205 of the Manual of Revenue Accounts, Third Edition. (G. R. No. 8962, dated 15th December 1890.)

13. In the case of stamps an examination should be carried out once in each of the four quarters of a calendar year by either the Collector, an Assistant Collector or a Deputy Collector not being the Deputy Collector in permanent charge of the Treasury, provided (*a*) that the Collector shall himself carry out at least one of such examinations in each official year; (*b*) that the maximum interval which shall be allowed to elapse between any two of the examinations shall not exceed four calendar months; and (*c*) that when an examination has been carried out by the Inspector General of Registration and Stamps before the examination for a particular quarter has been made by a district officer, the district officer need not examine the stock of stamps during that quarter. (G. R. No. 9814 dated 5th December 1885.)

14. Government will not insist on Assistant Collectors counting the stamps at Mámlatdárs' offices, if the officers of the Registration Department have counted them before in the same season; but Assistant Collectors are to understand that they are not relieved of the responsibility of looking after the stamp transactions and arrangements in the same manner as they supervise all the rest of the Mámlatdár's work. (G. R. No. 6897, dated 31st December 1874.)

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* "11. Stamp-vendors are public servants within the meaning of the Penal Code, and the records which they keep are Government records. They are required to show their books and stock to any officer duly authorized by the Collector or by Government to make inspection or examination. The stamp-vendor's Day and Issue Book should be in the same form as Form 17. One form will ordinarily suffice for his whole stock. 1st, court-fee labels should be entered; 2nd, court-fee papers; 3rd, general stamped papers; 4th, general stamp labels. A monthly abstract similar to that described in paragraph 8 above, except that labels need be shown in total only, is to be forwarded to the Mámlatdár for record on the closing day of each month. Stamp-vendors must carefully observe the rule referred to in paragraph 5 above, as well as the other rules, copies of which are supplied to them, relating to the sale of court-fee stamps and general stamps respectively. At the beginning of each month every vendor whose place of business is at the táluka head-quarters should show his book and balance of papers in hand to the officer in charge of the Treasury. Other vendors should show their books and balances when they attend at the táluka Treasury for the purpose of purchasing stamps."

15. The stamp-revenue supervising officers should ascertain during their tours of inspection or otherwise, as opportunities occur, how far the prescribed classes of stamped papers are applied to the purpose for which they were intended, and bring to notice the result of the enquiries in their periodical reports. (G. I., F. D., No. 941, dated 12th February 1872; *vide* G. R. No. 870, dated 28th idem.)

IV.—EXAMINATIONS.

1. The Inspector General of Registration and Stamps should on his tours examine the licensed vendors of stamps in the Stamp and Court-fees' Acts. (G. R. No. 5759, dated 22nd September 1877.)

2. His Excellency in Council has no objection to candidates for stamp licenses being examined in the Stamp and Court-fees' Acts to prove their acquaintance with the description of stamps required, but the examination must be of a very simple character. (G. R. No. 7723, dated 4th November 1882.)

V.—INDENTS, SUPPLY AND CUSTODY OF STAMPS.

1. In future there shall be but one general consolidated indent for stamps of all descriptions prepared by the Superintendent of Stamps, Calcutta, for transmission through the Government of India, so as to reach the Secretary of State not later than the first week in November each year. To this end, the Superintendents of Stamps in Madras and Bombay shall forward their indents so as to reach Calcutta not later than the first week in September in each year, and the Superintendent of Stamps and Stationery, Calcutta, will prepare a consolidated indent showing the demand for each of the three Presidencies, and submit it so as to reach the Government of India not later than the 4th October in each year for transmission to the Secretary of State.

It will be the duty of the Superintendent of Stamps, Calcutta, to examine the demands for each description and denomination of stamp, and to see whether by an economical redistribution of stock already held, the full aggregate indent resulting from a mere compilation of the local indents is necessary. It will also be his duty to see that the minimum quantities, which the Secretary of State is required to order under the several contracts, are ordered in the indents, and in case of excess demand over requirements, which may be occasionally necessary in order to conform to the terms of the contracts, that the excess is equitably distributed among the three depôts. And, finally, he will be responsible for the correct calculation of the amounts ordered. The Superintendent at Calcutta is authorized to correspond directly with the Superintendents at Bombay and Madras on any matter on which he considers further information necessary to enable him to conform to these orders. (G. I., F. & C., Nos. 972, dated 26th February 1880, 3217, dated 11th October 1880, and 896, dated 18th February 1889; *vide* G. Rs. Nos. 1247, dated 9th March 1880, 5773,

dated 30th October 1880, and 1811, dated 6th March 1889.)

2. All indents for stamps should be made out for *sheets* of stamps and not for numbers of single stamps. (S. of S. No. 125 (Financial), dated 12th April 1877; *vide* G. R. No. 3921, dated 25th June 1877.)

3. The Superintendent of Stamps should prepare his indents for stamps and stamped paper of all descriptions on the assumption that the stamps indented for will be supplied within 18 months from the date of the indent, and he should adopt the method of calculating the annual requirements formulated in the following form:—

4	5	6	7	
Established proportion.	How established proportion is calculated.	Number or quantity in store on	Number or quantity due on previous indents.	Number or quantity now indented for.
Sheets.		Sheets.	Sheets.	Sheets.
3,50,000	3½ times the average annual consumption.	80,000	60,000	2,10,000

Column 4 is calculated from the Stamp Office records.

Columns 6 and 7 are entered from the Stamp Office records.

The column "Established proportion" should represent 3½ times the average annual consumption calculated on the previous three years' actual consumption; the column "Now indented for" showing only column 5 — (column 6 + column 7). Assuming 1,00,000 to be the average annual consumption calculated on the actuals of the past three years, the proper calculation is as shown in the above form. (G. I., F. & C., Nos. 1981, dated 4th August 1879, and 2907, dated 24th September 1880; *vide* G. Rs. Nos. 4378, dated 20th August 1879, and 5317, dated 8th October 1880.)

4. The cases containing supplies of stamps, on their arrival from England, should be opened, and the bundles or packets of stamps counted. The packets need not, however, be opened, except when their appearance is suspicious. The Examining Committee should repack and seal the packets which they open.

It is also clearly important, to prevent frauds and errors remaining undetected for years, that the stock should be used up in the order of its receipt. (G. Rs. Nos. 2537, dated 6th May 1881, 3454, dated 16th June 1881, and 6140, dated 18th October 1881.)

5. Cases containing postal envelopes which are found on their arrival from England to be in good order by the Survey Committee, and which do not bear any appearance of having been tampered with, should be passed into store without being opened. (G. R. No. 2436, dated 20th March 1884.)

6. Sealed packages of stamped papers are not opened at the office of the Superintendent of Stamps when received from England, and they need not be opened at the Treasuries up-country when received there provided the English seals are intact; but the contents of any sealed package, when opened for use, should be immediately counted in the presence of the Treasury Officer in order that the contents may be certified to.

A numbered label is not affixed in the Bombay Stamp Office to the packages forwarded to the Treasury Officers. In the case of any deficiency, the wrapper should be returned to the Superintendent's office in order that the English number shown thereon may be communicated to the Director General of Stores.

Packages made up in, and bearing the seal of the Bombay Stamp Office should invariaby be opened on receipt, and their contents verified by the Treasury Officer before being stored. (G. R. No. 2610, dated 25th March 1884.)

7. Whenever it is necessary to bring to the notice of the Director General of Stores any deficiencies in the value and number of stamp stores received from England, the number shown on the wrappers of packages of stamps, and which is allotted to he packages during the manufacture of the stamps, should be quoted, so as to facilitate enquiry. (G. R No. 274, dated 11th January 1884.)

8. Whenever there is any fault in a parcel of stamps sent out from England, the wrappers should be sent home, as they bear the initials of the officers responsible for the contents. (S. of S. No. 26 Finl. (Stores), dated 10th December 1891; *vide* G. R. No. 723, dated 1st February 1892.)

9. The following are the rules for the security and safe custody of the stamps and water-marked paper in charge of the Superintendent of Stamps :—

(1) The store of stamps in charge of the Superintendent of Stamps at the General Stamp Office, shall be divided into two stocks of stamps, one of which shall be called the "Reserve Stock," and the other the "Current Stock."

(2) The reserve stock, which shall contain the great bulk of the stamps of all kinds and denominations, shall be held in the joint charge of the Superintendent of Stamps and the Assistant Superintendent. The current stock of stamps shall be in the charge of the Assistant Superintendent and the Store-keeper.

(3) The reserve stock of stamps shall be kept in the strong rooms of the Stamp Office. The doors of these rooms shall be protected by double locks.

The key of one lock shall remain in the hands of the Superintendent, and the key of the other in the hands of the Assistant Superintendent.

(4) The adhesive stamps kept in the reserve stock shall be principally kept in fire-proof safes, the keys of which shall be deposited in an iron safe in the strong room, and the key of the said safe shall be kept by the Superintendent. A list of the contents of each safe will be kept in it, which list is to bear the Superintendent's and Assistant Superintendent's signature. The remaining portion of the reserve adhesive stamps may be kept in the original cases and sealed until required. The reserve portion of non-judicial or bi-color stamps shall be kept in teak presses in the strong room or in their original cases and sealed.

(5) The current stock of stamps shall contain a supply of stamps of all kinds and denominations up to Rs. 25, sufficient for one month's requirements. Stamps of a higher value shall be given out weekly from the reserve stock, and passed into the current stock.

(6) The keys of the safes containing current stamps in the office shall be in the sole charge of the Assistant Superintendent.

(7) The keys of the double locks on the doors of the rooms, in which the current stock of stamps is kept, shall be held by the Assistant Superintendent and the Store-keeper, and both shall be present when the current stock of stamps is opened daily, and both of them along with the Superintendent shall be present when the reserve stock is opened.

(8) In the event of absence or sickness of any of the above three persons, his duties can be deputed to either of the other two.

(9) When stamps have been passed out from the current stock, they shall be considered to be in the charge of the Store-keeper, who shall be answerable for their safe custody until they are either used in the office, or despatched to Treasury and other officers, who have indented for them.

(10) The stock of water-marked paper of the kind lately used for the printing of bi-color* stamps shall be kept in the godown away from the Stamp Office which is rented by Government. The keys of the godown will remain with the Assistant Superintendent; but the Store-keeper shall have access to the godown, under instructions from his superior officers, in order to bring the water-marked paper required for use either in the Stamp Office, or intended for issue to other departments.

The printing of these stamps is now stopped.

(11) The stock of hundi water-marked paper of the kind used in the Government Departments for Supply Bills, Transfer Remittance, Receipts, &c., shall be kept with the reserve stock of stamps under the charge of the Superintendent alone, and issued as occasion requires to the Assistant Superintendent to be kept with the current stock of stamps for daily use. (G. R. No. 5690, dated 26th October 1874.)

10. The following are the rules for the guidance of officers who have the custody of stamps at the Táluka Treasuries :—

(1) As soon as stamps are received from Bombay they should be counted in the Mámlatdár's office, in the presence of the Huzúr Deputy Collector and the Mámlatdár, and brought on the accounts.

(2) Stamps to be issued to tálukas should be counted and issued in the presence of the Huzúr Deputy Collector and the Mámlatdár, the entries in the book being made and compared with indents before issue.

(3) Indents from tálukas should not be submitted oftener than once in every two months.

(4) The Stamp Kárkún should never keep in his possession stamps of total higher value than the amount of security given by him.

(5) As a general rule, the Stamp Kárkún should replenish his stock only once a week and should not be permitted to receive stamps from the general stock oftener than that. He should calculate the average weekly sales and regulate his supply accordingly.

(6) The amount of the Stamp Kárkún's security should be fixed at an amount equal to the general sales of one week, but in no case shall the security be worth less than 1,000 Rupees.

(7) On the occasion of each sale, the stamps asked for by the licensed vendor should be compared with the entries of sale against his name in the book, and the amount of cash entered in the Day Book as received from him.

(8) Ordinarily, stamps should not be sold to licensed vendors oftener than once a week, a different day of the week being appointed for each vendor.

(9) A round sum of rupees should be fixed as the minimum value of stamps that can be removed at one time by each vendor. This is to be fixed on an average struck from past purchases. Any excess of stamps supplied over the above minimum should also be such as would be represented by a round sum of rupees. This is desirable to simplify all calculations.

(10) The rules limiting the issue of stamps to tálukas and stamp vendors to certain periods may be relaxed whenever, in the opinion of the officers concerned, the interest of the State and the convenience of the public render such relaxation necessary. (G. R. No. 1028, dated 26th February, 1880.)

11. or each description of stamps classified, as per margin, under seven different heads, two accounts, one being a stock book and the other a book of issue, should invariably be kept in Central Depôts

1. General stamp-papers, hundis and bills of lading.
2. Receipt stamps and foreign bills of exchange.
3. Share transfer.
4. Court-fee stamps.
5. Telegraph.

6. Postal.
7. (In Karáchi and Aden Central Depôts) Special adhesive stamps.

Uniformity of procedure will thus be secured, and in addition it will enable any one examining the accounts to at once ascertain therefrom what quantity of any particular description of stamp is in charge of the Huzúr Deputy Collector and what quantity is in the charge of the Treasurer. (G. R. No. 2572, dated 20th May 1878.)

12. The stock of stamped envelopes and post-cards in the depôts at Kaira, Násik and Sholápur should be limited to the probable consumption in two months. (G. R. No. 7490, dated 4th November 1887.)

13. As the Residency Treasury at Baroda has no sub-treasury under it, there is no necessity for its keeping such a large stock of stamps as the rules sanctioned in the Resolution of the Government of India, No. 1596,* dated 28th June 1886, require. For the convenience of that Treasury, accordingly, the period of five months in Rule 7 is altered to two months and the periods of six and three months in Rule 8 are altered to four and two months respectively. (G. R. No. 6037, dated 7th September 1888.)

* Printed at pp. 309—313 of the Compilation of General Rules.

14. The officer in charge of the stamp depôt at Kárwár is allowed to prepare his stamp indent due in the month of March every year for a supply of stamps equal to the probable requirements of six instead of three months. (G. R. No. 5334, dated 25th July 1893.)

15. The use in Native States of labels or stamps of the Government of India, however carefully altered, in levying the revenue of those States is considered by the Governor General in Council to be dangerous to the revenues of British India. His Excellency in Council also deems it necessary to direct that stamps or labels prepared for use in the levy of duties under the Indian Post Office Act, the General Stamp Act, the Court Fees Act, or of any other duties of the Government of India, should under no circumstances be supplied or used for any other purposes than the levy of the Imperial revenues of British India.

These orders do not apply to the Berárs. (G. I., F. D., No. 805, dated 12th June 1876; *vide* G. Rs. Nos. 3655, dated 23rd idem, and 3869, dated 5th July 1876.)

16. The Superintendent of Stamps, Bombay, should supply the Resident at Hyderábád with adhesive court-fee stamps with the word "Secundrábád" printed across them on the requisition of the Resident. The expenses entailed by the arrangement, including the value of the stamps supplied and the cost of overprinting them, must be paid by the Secundrábád Abkári Fund. (G. I., F. & C., No. 1465, dated 9th April 1891; *vide* G. R. No. 2809, dated 24th idem.)

17. The Political Agencies in Gujarát may be supplied with impressed and adhesive court-fee stamps perforated as well as overprinted with the names of the Agencies for use in the collection of fees, fines and other judicial receipts forming the Local Funds in those Agencies. The expenditure entailed by the arrangement, including the value of the stamps and the cost of overprinting and perforating, as also the cost of transport, should be borne by the Local Funds concerned. (G. I., F. & C., No. S. R. 4658, dated 19th November 1892; *vide* G. Rs. Nos. 14, dated 3rd January 1893, and 1169, dated 10th February 1893.)

VI.—SALE OF STAMPS.

1. Every Court is to be a sub-depôt for the sale of stamps. (G. R. No. 917, dated 19th February 1874.)

2. The following are the rules for the sale of adhesive court-fee stamps by the salaried vendors at the High Court and the Court of Small Causes, Bombay :—

(1) Indents are to be submitted by the salaried vendors twice a week, *i.e.*, every Wednesday and Saturday before 10 o'clock. The vendors should arrange to keep a sufficient stock of stamps to meet the requirements of suitors, and indent only for such stamps as are usually used.

(2) The stamps, together with the daily cash collections, are to be locked up in the chest safes, for which a suitable place will be provided by the Court. The key of the safe to be retained by the vendor himself.

(3) The sale book is to be written up daily. It should be kept neat and free from erasures. Corrections, if any, may be made in red ink, and initialled by the vendor.

(4) The cash collections are to be sent daily at 10-30 A.M. to the Stamp Office by the vendor's peon with a printed memorandum of the amount remitted, for which a receipt will be granted in a printed book.

(5) A return of stamps sold and the balance of stamps in hand, and cash, together with the sale book is to be forwarded weekly to the Stamp Office for verification, commencing from Wednesday, the 7th May 1873. The stamps will be examined either by the Assistant Superintendent or the Store-keeper, and correctness certified.

(6) Stamps are to be sold from 10 A.M. to 4 P.M. for cash. (G. R. No. 4643, dated 14th August 1873.)

3. Care must be taken that the cash receipts of each day on account of stamps sold by the stamp vendors at the High Court and the Court of Small Causes at Bombay are regularly paid into the office of the Superintendent of Stamps and that the account of stamps in hand is checked weekly. The Assistant Superintendent of Stamps should at least once a

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month visit the several Courts and take stock of the stamps, and satisfy himself that the wants of the public are properly attended to. (G. R. No. 2289, dated 22nd April 1873.)

4. The Shroff of the Military Treasure Chest at Deesa should be treated as an *ex-officio* vendor and be directed to sell stamps of all kinds and of all values. (G. R. No. 5893, dated 7th November 1874.)

5. The Superintendent of Panchgani should be granted a license for the sale of stamps at that station, the stamps being supplied to him without payment being required in ready money. (G. R. No. 5255, dated 1st October 1879.)

6. One of the kárkúns employed in the office of the Huzúr Deputy Collector, Dhárwár, but not connected with the stamp branch of the Huzúr Treasury, should be appointed an *ex-officio* vendor of court-fee and receipt stamps, and be paid the authorized discount in addition to his pay in the same way as the kárkúns of Collectors and their Assistants when on tour in the districts. The kárkún should also be authorized to sell postage stamps and envelopes. (G. R. No. 1513, dated 5th March 1888.)

7. The Cantonment Magistrate, Málegaon, is authorized to sell court-fee and general stamps in accordance with the spirit of the rules laid down in Government Resolution* No. 6376, dated 9th September 1886. (G. R. No. 5169, dated 23rd June 1892.)

* Printed at page 325 of the Compilation of General Rule.

8. A clerk of the Chief Presidency Magistrate's Court and a clerk of the Presidency Magistrate's Court, Girgáon, may be allowed to sell court-fee stamps of the value of one anna and eight annas each, and to receive commission at 2 per cent. on the sales in addition to their pay. (G. Rs. Nos. 4896, dated 18th July 1891, and 3262, dated 5th May 1893.)

9. There is no objection to schoolmasters being appointed vendors of stamps, provided that the sale of stamps be limited to certain hours in the day, so as not to interfere with school hours. (G. R. No. 3475, dated 10th October 1867.)

10. Government will not object to grant licenses for the sale of stamps to such Sub-Registrars as may be recommended for the purpose. (G. R. No. 2608, dated 1st June 1871.)

11. In cases where for the public convenience and in the public interest it is deemed desirable to grant licenses for the sale of non-judicial stamps to Post Masters, Government will be prepared to consider carefully any representations that may be made by Collectors and Commissioners, and with the consent of the Postal authorities to grant such licenses if such a course is held to be expedient. (G. R. No. 6504, dated 9th December 1880.)

12. The rule* sanctioned by Government Resolution No. 6563, dated 5th September 1883, for regulating the sale of impressed court-fee stamps by licensed vendors, does not require that a person who has to pay a court fee of Rs. 50 or upwards shall obtain all the impressed stamps or labels necessary to represent the fee from an *ex-efficio* vendor or from a stamp vendor holding a special license. And the rule is not transgressed if a person, in a transaction requiring a court-fee stamp, say of the value of Rs. 67-8-0, after having purchased an impressed paper of the value of Rs. 60 (the highest suitable value at the time obtainable) from the local *ex-officio* vendor, uses, in order to make up the fee of Rs. 67-8-0, labels which he purchased either then expressly or at any previous time from a licensed stamp vendor. Nor can it be said that the licensed stamp vendor transgressed the rule if he sold labels to the person for Rs. 7-8-0 knowing that he intended to use them for the above purpose, because he was not bound to inquire what purpose the labels were to be put to. The rule merely prohibits the sale, by a licensed stamp vendor, of any impressed court-fee stamp of the value of Rs. 50, or upwards, except under a special license. (L. R. No. 389, dated 24th March 1886; *vide* G. R. No. 2821, dated 14th April 1886.)

* Printed at page 335 of the Compilation of General Rules.

13. No restriction prevails regarding the sale of stamps on Sundays by licensed stamp vendors who are not public servants and do not sell at public offices. (G. R. No. 5334, dated 25th October 1871.)

14. In the new adhesive court-fee stamps a blank space has been left for inserting, at the time of sale to the public, the name of the purchaser, the date of sale and the signature of the vendor. The salaried vendors of stamps in the Court of Small Causes, Bombay, are, however, exempted from the obligation to endorse on the stamps sold by them the names of the purchasers. (G. Rs. Nos. 3780, dated 16th May 1883, and 2438, dated 20th March 1884.)

15. The Stamp Act and the rules thereunder extend to British India only. A Collector is, therefore, not empowered to grant licenses to sell stamps in foreign territory. (G. R. No. 2354, dated 19th April 1887.)

16. Sales of court-fee stamps by stamp-vendors are to be recorded in the following form :—

Date.	Name and Residence of Purchaser.	Kind of Paper.	Number of Papers.	Current Number of Sales.	Rate.	Value.	Remarks
1	2	3	4	5	6	7.	8

(G. Rs. Nos. 6780, dated 12th September 1883, and 1192, dated 7th February 1884.)

17. The Collectors should through their Mámlatdárs furnish every licensed vendor in their districts with a vernacular copy of every notification appearing in the *Government Gazette* the tendency of which is in any way to modify or amend any of the provisions of the Stamp Act or the Court-fees Act. The distribution of these vernacular copies should be effected as soon as possible after the publication, in the *Gazette*, of the particular notification to which they may relate. In case of notifications reducing the rates under either Act, their vernacular copies should be posted in a conspicuous place in the shop or stall of every registered licensed vendor of stamps. The Inspector General of Registration and Stamps should see on his tours that these orders are properly carried out.

Notifications of the Governor General in Council amending the rules should be published in the *Government Gazette* in English, as well as in Maráthi Gujaráti and Kánarese. The Superintendent, Government Central Press, should send direct to the Collectors the vernacular copies of rules for distribution amongst the stamp vendors. (G. Rs. Nos. 5759, dated 22nd September 1877, and 7175, dated 1st December 1877.)

18. The following is the form of receipts for stamps issued from a Treasury to Revenue Officers for sale when on tour:—

Receipt for stamps issued.

Received from the Treasury Officer_____ the undermentioned supply of stamps as per the terms of Government Resolution, Revenue Department, No. 6376,* dated 9th September 1886:—

* Printed at p. 325 of the Compilation of General Rules.

Number.	Description	Denomination.	Value.	

Dated 189 .

Signature and Designation of Receiving Officer.

N. B.—A separate form of this receipt should be filled in and signed for each description or denomination of stamp issued to a Revenue Officer under the terms of the orders quoted above. The receipt on being received in the Treasury should be placed among the stock of stamps from which the supply acknowledged has been withdrawn.

(G. R. No. 4406, dated 4th July 1888.)

VII.—ILLEGAL SALE OR USE OF STAMPS.

1. On reference to the High Court, under Section 438 of the Criminal Procedure Code, of a case in

which a person was convicted by a Second Class Magistrate of selling a stamp without authority to do so under Section 68 of Act I of 1879, and sentenced to pay a fine of Rs. 15 or in default to suffer one month's rigorous imprisonment, the following order was passed by that Court :—

"As the accused is not a person appointed to sell stamps, and has sold a stamp, the conviction under Section 68 of Act I of 1879 is quite legal."

(G. R. No. 1125, dated 19th February 1887.)

2. The Stamp Act, 1879, has not the least application to postage stamp labels. Rule 9* of the rules for the custody, distribution and sale of postage stamp labels, &c., published in the *Gazette of India*, dated 15th January 1881, Part II, page 95, distinctly mentions *bonâ fide* retail vendors of postage stamps other than those mentioned in the preceding rule, and does not require such *bonâ fide* retail vendors to be authorized to sell postage labels in the manner and under the conditions described in that rule. The rule simply provides that a district officer may authorize the grant of discount on purchases of postage stamp labels to such *bonâ fide* retail vendors. Private individuals who sell postage stamp labels, and who choose to forego the grant of discount, are not subject to any such conditions.

* *Vide* Rule 24 of the rules for the custody, supply and sale of stamps of all descriptions published under G. N. No. 5422, dated 30th July 1886, at pages 644—648 of the *B. G. G.* of 5th August 1886.

As regards the sale of receipt stamps, the Stamp Act, 1879, is applicable, and under the provisions of Section 68 of that Act it is a punishable offence for any person who is not appointed to sell stamps under the rules made under Section 55 of the Act to sell or offer for sale any stamps to which the Act relates. (L. R. No. 412, dated 8th April 1882 ; *vide* G. R. No. 2763, dated 27th idem ; *vide* also G. R. No. 7723, dated 4th November 1882.)

3. The writing of the name of the purchaser and other particulars on the back of a stamp is required in the case of *impressed stamps* by the rules for the sale of stamps. The rules go no further than to require these endorsements to be made by the stamp vendors, and there is no provision of the Acts or of any rule made under them that a stamp so endorsed may only be used by or on behalf of the person whose name is so endorsed. The purpose of the rules requiring the endorsement seems to be merely the provision of a means of ascertaining when, where and by whom a stamp has been purchased, but there is nothing to prevent an impressed stamp purchased by one person being used by some other person.

As regards court-fee adhesive stamps, there is not even a rule to require 'the name of the purchaser, the date of sale and the signature of the vendor' to be written in the blank space left for them. Government Resolution No. 3780† of 16th May 1883 is the only authority for the practice.

† *Vide* Order 14 (VI) *supra*.

Adhesive court-fee stamps as well as impressed stamps used under the General Stamp Act or the Court-fees Act can, therefore, legally be used by persons other than those whose names they bear as purchasers. (L. R. No. 1105, dated 23rd August 1884; *vide* G. R. No. 7199, dated 9th September 1884.)

4. Although no person can sell adhesive court-fee stamps without a license, a document which bears a stamp unlawfully sold is not thereby invalidated. (G. R. No. 5153, dated 26th June 1884.)

5. The Government of India in their Resolution No. 1114, dated 25th February 1884, republished at page 169 of the *Bombay Government Gazette* of 6th March 1884 under Notification No. 1994 of the 5th idem, having directed that non-judicial stamps of the new design should be exclusively used, and the period allowed to the public for exchanging bi-color stamps of local manufacture for those of the new design having expired, the use of a stamp of the old bi-color pattern, even if it was purchased from a stamp vendor at a time when stamps of that pattern were in general use, is illegal. (G. R. No. 6156, dated 28th August 1886.)

VIII.—DOCUMENTS LIABLE TO STAMP DUTY OR OTHERWISE.

1. When a doubt arises as to the liability of any class of documents to stamp duty, the proper course is to refer a test case under Section 46 of the Stamp Act to the High Court and not to Government, which can give no binding orders on the subject. (L. R. No. 690, dated 20th May 1887; *vide* G. R. No. 4021, dated 2nd July 1887.)

2. The general receipt given by the head of an office on the back of a Pay Abstract is not liable to a stamp duty, the receipt being executed in this instance by an officer of Government in his official capacity and acting on behalf of Government, but when the amount of the Pay Abstract comes to be distributed, the receipts of the payees for salaries exceeding 20 rupees a month must have a stamp of one anna affixed to each, like other receipts given for the payment of money. The taking of such receipts on the back of a general Pay Abstract does not form any ground for exemption. (G. I., H. D., No. 3860, dated 31st July 1862; *vide* G. N., dated 25th August 1862.)

3. A power of attorney is not requisite in cases in which District Officers and their subordinates while on tour in the districts order payments out of their salaries at the head-quarter station; and no stamp is, therefore, necessary. (G. R. No. 7464, dated 19th December 1876.)

4. The sowárs of the Salt Department being in fact Mounted Police are under entry 14 (*a*) of the second schedule to the Notification of the Government of India No. 2897 S. R.,* dated 7th June 1894, exempt from stamp duty in respect of the receipts

*Republished at pp. 602—617 of the *B. G. G.* of 21st June 1894.

given by them on account of their pay and allowances. (G. R. No. 4134, dated 9th August 1880.)

5. A joint receipt given by a Government servant for a sum in excess of Rs. 20, part of which, not exceeding Rs. 20, is for his own salary and the rest for a contingent allowance which he receives for expenditure on behalf of Government, is not liable to stamp duty. Such a receipt is really two receipts in one. It is a receipt given by him in his personal character for his salary and it is a receipt given by him in his official capacity for money with which he is entrusted on behalf of Government.

Separate receipts should, however, be invariably given for money received by an officer on his own account and for money drawn for expenditure on behalf of Government. (G. R. No. 7508, dated 20th September 1884.)

6. Under Article 940 of the Civil Service Regulations the leave allowances of a ministerial officer can be drawn only at the Treasury where his salary is payable. In consequence of this rule, ministerial officers, when spending their leave at stations far removed from the place of their employment, are obliged to have their allowances drawn through fellow officers or friends living at the place where they are employed. As these agents are in most cases only informally appointed, and as payment to an informally appointed agent is not a valid discharge, the practice was represented as unsafe. It was at the same time urged that it would be a great hardship to require men upon small salaries to go through the formality of executing a regular stamped power-of-attorney, and that the Government of India should exempt from stamp duty instruments executed by public servants drawing not more than Rs. 200 a month, for the sole purpose of realizing their leave allowances. Before finally deciding on the question, enquiry was made by the Government of India as to the practice of the several Local Governments and Administrations in respect of the payment of leave allowances of ministerial and other non-gazetted officers when such allowances were not drawn by the absentees in person. The Local Governments were also asked to report if a change in the existing practice was considered necessary. From the replies received it appeared that the arrangements varied in different provinces; but the general consensus of opinion was that the present arrangements worked well and did not require to be altered in any way. Under these circumstances the Government of India decided that the existing arrangements need not be disturbed. (G. I., F. & C., No. 58, dated 5th April 1882; *vide* G. R. No. 2642, dated 24th idem.)

7. As to the question whether persons employed in Goa by the British Government should be required to attach British receipt stamps to their pay bills, it is observed that Section 5 of the Indian Stamp Act renders chargeable with duty every instrument

(other than a bill of exchange or promissory note) mentioned in the first schedule, which not having been previously executed by any person, is executed out of British India on or after the first day of April 1879, relates to any property situate, or to any matter or thing done or to be done, in British India, and is received in British India.

A receipted pay bill is an instrument mentioned as No. 52 in Schedule I to the Act. If, therefore, it relates to anything done or to be done in British India, it must be stamped with a one-anna British Indian stamp, and if it is not stamped, it will not be admissible in evidence (*vide* Section 34).

The receipt relates to the payment of money. If, therefore, the payment takes place in British India, the receipt must be stamped in accordance with Act I of 1879. If the payment does not take place in British India, the mere fact that the contract may have been accepted there, or that the funds for payment may have been received thence, will not suffice to bring the receipt on the pay bill within Section 5 of the Indian Stamp Act I of 1879. For the receipt cannot be said to relate to the contract or to the source from which the money is obtained, but only according to the strict construction to be given to fiscal enactments, to the actual payment or delivery of the money.

The *lex fori* governs procedure in actions on a contract as the *lex loci contractus* or the law of the place of acceptance governs its validity, and the *lex loci solutionis* or law of the place for performance governs all relating to its fulfilment.

Addison on Contracts, Chapter XXIX, pages 1034—1036.
Smith's Leading Cases, Mostyn *v.* Fabrigas, Volume I, page 657 *et seq.*
Pitt Taylor on Evidence, Section 41.

The Courts do not take notice of the revenue laws of foreign States unless when the contract is itself made void by them. If, therefore, receipt were offered in a British Indian Court as evidence of a payment made in Goa, the Court would not consider whether or no it was stamped as required by the law for the time being in force in Goa.

James *v.* Catherwood, 3 D. and R., 190, quoted in Fisher's Digest, 4082.
Bristow *v.* DeLecqueville, 5 Exch., 275, quoted in Fisher's Digest, 3561 and 7448.

It may be that the law in force in Goa requires a stamp to be affixed to a receipt for money paid there, and if so it would be advisable that the requirements of that law should be complied with, though it is very unlikely that any suit in which there could be occasion for production of the pay bills could arise there. (L. R. No. 138, dated 2nd February 1891 ; *vide* G. R. No. 1391, dated 20th idem.)

8. A power of attorney executed by a Government pensioner authorizing his agent to draw, during his absence from Baroda, his pension from the Residency Treasury (which is situated in Baroda territory), is

not liable to stamp duty. (G. R. No. 3464, dated 4th June 1887.)

9. Customs House pass notes for Commissariat stores cannot be considered as applications presented by persons having dealings with Government, and, therefore, do not require to be stamped under Schedule II of the Court Fees Act, 1870. (G. R. No. 1524, dated 18th March 1873.)

10. Article 8, Schedule I of Act VII of 1870, applies in terms only to the copy of any document which *is* liable to stamp duty under the Stamp Act (1879). If, therefore, the original document is not liable to stamp duty under that Act, no court fee is leviable under Article 8, Schedule I of Act VII of 1870, on a copy of it. (L. R. No. 337, dated 27th March 1879; *vide* G. R. No. 1772, dated 2nd April 1879.)

11. Transfers of debentures, whereby, for the purpose of securing money advanced by way of loan, a right over the wharfage fees levied by the Karáchi Harbour Board under Act III of 1879 is created in favour of the creditor, are exempted from stamp duty by clause 17 (*d*) of Schedule II of Act I of 1879. (L. R. No. 1109, dated 20th September 1881; *vide* G. R. No. 5649, dated 28th idem.)

12. Receipts for sums in excess of Rs. 20 on account of wharfage fees, &c., granted by the Karachi Harbour Board are liable to stamp duty, and Government do not see any reason to exempt such receipts from the payment of duty. (G. R. No. 4775, dated 11th June 1885.)

13. Petitions and applications from persons claiming ground which is not shown in the city survey maps are exempt from court fees under Section 19, clause 9, of the Court Fees Act. (L. R. No. 816, dated 15th October 1878; *vide* G. R. No. 5434, dated 23rd idem.)

14. Certificates of sale granted by the Civil Courts as well as those granted by the Revenue officers are clearly liable to stamp duty under Article 16, Schedule I of the Stamp Act. (L. R. No. 524, dated 26th April 1880; *vide* G. R. No. 3009, dated 10th June 1880.)

15. Article No. 16 of Schedule II of the Indian Stamp Act, 1879, exempts certain 'surrenders of leases' from stamp-duty. A notice of relinquishment given by an occupant under Section 74 of the Revenue Code is not a surrender of a lease within the meaning of that article, but such notices are not liable to stamp duty because there is nothing in Schedule I of that Act that affects them. If the notice can properly be regarded as 'an application for leave to relinquish land,' then it is exempted from court fee by Section 19, clause xi, of Act VII of 1870. (L. R. No. 524, dated 26th April 1880; *vide* G. R. No. 3009, dated 10th June 1880.)

16. Section 90 of the Land Revenue Code requires an inámdár, who attaches a defaulter's property, to

make an immediate *report* to the Collector of his having done so. The Collector, if the demand appears a just one, may order the sale of the property. There can be no reason for holding the inámdár's report to be an application or petition within the meaning of Article I, clause (*b*) of Schedule II of the Court Fees Act. (L. R. No. 163, dated 1st February 1882; *vide* G. R. No. 987, dated 11th idem.)

17. Under the view of the law given by the Remembrancer of Legal Affairs in his following report No. 325, dated 4th March 1884, receipts given not only by dumáldárs but also by any inámdár to the village officers for sums paid by such officers to the dumáldár or inámdár on account of land-revenue collections must be stamped when the sum in respect of which the receipt is given exceeds Rs. 20:—

"I am of opinion that the exemption in clause 15 (*c*), Schedule II of the Stamp Act applies only to receipts given for payments of rent made by cultivators, whether to a Government officer or to an inámdár. Thus every receipt given under Section 58 of the Land Revenue Code is exempt. But a receipt given by an inámdár to a village officer for the aggregate or some portion of the aggregate collections made by him in the village is not, I think, exempt from stamp duty. Similar receipts given by a Government officer would, it is true, be exempt, but in that case the exemption would fall under clause 18 of Schedule II of the Stamp Act."

(G. R. No. 2641, dated 27th March 1884.)

18. Letters addressed by Government contractors to the Collector relating to the contract work ought to be treated as of the nature of applications, and not as official correspondence, and are accordingly liable to stamp duty. (L. R. No. 1525, dated 27th November 1882; *vide* G. R. No. 8, dated 3rd January 1883.)

19. The attention of the Board of Revenue, Lower Provinces, was directed to a case in which a bank had granted a duplicate receipt to another bank on unstamped paper, although the original receipt was stamped with a duty of one anna, and the money for which the original receipt was granted was required to be accounted for to a party other than the depositor. The case was referred to the Advocate General for opinion as to whether the duplicate receipt was liable to stamp duty, and the following opinion was given by him:—

"A receipt for money is an instrument within the meaning of the Stamp Act (Act I of 1879). It follows that a duplicate receipt mentioned in this case is liable to a stamp of one anna under Article 23 (*a*) of Schedule I."

(G. I., F. & C., No. 2153, dated 20th July 1883; *vide* G. R. No. 5885, dated 8th August 1883.)

20. The preceding order does not apply to documents kept merely for purposes of record. It seems clearly unnecessary that receipt stamps should be affixed to the so-called 'duplicate receipts' which are of the nature of office copies. (G. R. No. 6573, dated 15th August 1884.)

21. A document such as that given in the margin appears to be an application from a principal to the Customs Collector, requesting his approval, under Section 202 of the Sea Customs Act, of the authorization of the person named therein to act at the Custom House as such principal's agent. For such an application a court-fee stamp of one anna is all that the law requires. (Act VII of 1870, Schedule II, Article I (*a*), paragraph I).

To

THE SIRKA'RKUN,
Broach Bandar.

SIR,—I, the undersigned, beg to state that A. B. has been appointed to act for me in your office. I request, therefore, that you will be good enough to allow him to work for me.

Dated

(Sd.) C. D.

An agent may receive his actual authority from his principal either verbally or in writing. The Customs Collector may, if he thinks fit, refuse, under paragraph 2 of Section 203 of the Sea Customs Act, to recognize an agent unless the principal deposits with him an authority in writing. Such an authority in writing, when one is executed, whether it is deposited with the Customs Collector or not, would require to be stamped in accordance with the General Stamp Act. But, unless the Customs Collector requires a written authority, there is nothing that prevents a principal and agent from being satisfied with a verbal authority, if they think fit. (L. R. No. 1127, dated 27th August 1884; *vide* G. R. No. 7247, dated 10th September 1884.)

22. The Mámlatdárs' Courts Act does not require defendants to file written statements, nor is it contemplated by that Act that a written statement should ever be put in. The Mámlatdár is apparently expected by examination of the defendant, or his pleader, to ascertain what his defence is. But if in a rare case the Mámlatdár permits the defendant to file a written statement, there is nothing in the Court Fees Act that renders such a statement liable to a court fee. If it takes the form of an application or petition, then, under the second paragraph of clause (*b*), Article 1 of Schedule II of the last-named Act, it will be liable to a court fee of 8 annas. (L. R. No. 168, dated 2nd February 1885; *vide* G. R. No. 1267, dated 11th idem.)

23. Collectors against whom suits are pending in the High Court may furnish a general power of attorney to the Government Pleader in that Court on plain paper, it being not necessary to execute it on stamped paper. But this ruling cannot be held to apply to vakilátnámás given by a Collector to a Government Pleader, for general powers of attorney are governed by the Stamp Act which specially exempts from stamp duty instruments executed by or on behalf of Government, while vakilátnámás are governed by the Court Fees Act, which contains no such exemption. Vakilátnámás given by Collectors, when such documents are necessary, are liable to the prescribed court fee. (G. Rs. Nos. 4683, dated 1st August 1877, and 2436, dated 11th May 1878.)

24. The stamp duty on powers of attorney written in any other but the English language and executed out of British India should be indicated in the manner prescribed in Rule 11 of the rules* under the Indian Stamp Act, 1879 (promulgated under Financial Notification No. 196, dated 19th April 1879) which applies expressly to *all* documents executed out of British India excepting those therein indicated. (G. I., F. & C., No. 2471, dated 29th August 1879; *vide* G. R. No. 4809, dated 10th September 1879.)

* *Vide* Rule 12 of the rules published under the G. of I. Notn. No. 2170, dated 22nd May 1891, printed at pp. 314—319 of the Compilation of General Rules.

25. The proprietors of large estates cannot claim exemption from the operation of the law in respect of stamp duty on their communications addressed to the Collector in the form of a letter, if of the nature of applications. (G. R. No. 3339, dated 20th May 1882.)

26. Clause 18 of the 2nd schedule to the Stamp Act is as follows:—

'Any instruments executed by or on behalf or in favour of Government in cases where but for the exemption the Government would be liable to pay the duty chargeable in respect of such instrument.'

This exemption clearly relates to instruments executed by or on behalf of Government or in its favour only in cases in which the Government would be chargeable with the duty like any private person but for the exemption.

Cheques drawn by Presidents or Secretaries of the Local or District Boards in their official capacity are clearly not instruments made on behalf of Government; consequently they do not come within the meaning of the exemption above quoted. The fact that the duty would come out of funds which are Government money, is irrelevant to the question submitted.

Suppose a deed is drawn in favour of a Government servant, but it is understood, though not mentioned in it, that such a Government servant is a trustee for the Government and the Government servant as a party to the instrument would have to pay the stamp duty (which would have to be recouped by Government) such a document would be liable to stamp duty, Government not being a party mentioned therein, though eventually the payment of the stamp duty would have to be made by the Government.

Under these circumstances the cheques in question are not exempt from duty, but are liable to the usual stamp duty. (Opinion of the Advocate General, Bengal, dated 6th August 1885; *vide* G. R., F. D., No. 2759, dated 26th September 1885, and G. M. No. 8250, dated 10th October 1885.)

27. Under Section 50 of the Local Boards Act, money required by a Local Board to provide or replenish a permanent advance can only be drawn from the Government Treasury by cheque. Rule 46 of the Bombay Local Boards' Rules* prescribes the form of cheque. It may be doubted whether this order is properly designated a cheque as defined in

* Printed at pp. 221—239 of the Compilation of General Rules.

the General Stamp Act, on the ground that, in the case of Local Funds which under Section 44 of the Act Government is bound to keep, it cannot be said to be acting as a banker. But even if this doubt is correct, the document fulfils the conditions of a bill of exchange as defined in Section 5 of Act XXVI of 1881 and is equally liable, if for more than Rs. 20, to a stamp duty of one anna under Article 11 (*a*) of Schedule I of the General Stamp Act.

There is no rule which requires the first cheque drawn for money required to begin a permanent advance to be accompanied by any receipt at all. In the absence of any such rule, any demand for a receipt seems irregular. It would be quite sufficient if the cheque were merely accompanied by a memorandum stating the purpose for which the money was required, but not in the form of a receipt. If, however, for any reason a written acknowledgment of the receipt of money (over Rs. 20) is given by the officer drawing the cheque, it must be stamped, as it appears to be a receipt as defined in the General Stamp Act.

As regards money drawn to recoup advances, Rule 45 prescribes exactly what documents must accompany the cheque, *viz.* a bill supported by sub-vouchers. There is nothing requiring the receipt of the officer who draws the money, and the bill which he sends in should not be in the form of a receipt. If for any reason he does give a written acknowledgment of receipt of money (over Rs. 20) it must be stamped, but his doing so seems quite superfluous.

For the reasons given by the Advocate General of Bengal (quoted in Government Resolution No. 2759,* dated 26th September 1885) documents executed by officers of Local Boards are liable to stamp duty. (L. R. No. 690, dated 20th May 1887; *vide* G. R. No. 4021, dated 2nd July 1887.)

* *Vide* order 26 (VIII) *supra.*

28. Receipts passed by Municipalities on account of house-tax and cesses, &c., for sums exceeding Rs. 20 are not exempt from stamp duty. Article 15 (*b*) of Schedule II to the Stamp Act exempts from stamp duty a receipt for payment of money "without consideration." The exemption was intended apparently to apply to receipts for "voluntary" payments, which in the ordinary legal acceptation of the term are payments without consideration, such as payments made merely in consideration of natural love or affection or mere gifts. But the receipts in question are for payment of house rate, &c., due to the Municipality under the Act constituting the Municipality. The payment is not gratuitous, but one in satisfaction or discharge of a legal obligation imposed by the Act, and in order to relieve the payer from the consequence which would ensue in case of his committing default, and is, therefore, not one without "consideration." (G. R. No. 5862, dated 1st September 1887.)

29. Security bonds executed by municipal servants are not exempt from stamp duty. (G. R. No. 3251, dated 21st May 1888.)

30. Anybody may write an ordinary letter to the Secretary to a Municipality without putting a court-fee stamp on it. Whether the Secretary is bound or empowered to *act* on such letters, is a different question. He may adopt the information afforded by them, and take, or suggest, official action thereon. But he is not *bound* to do so, and he might with equal propriety refer his correspondent to the municipal authorities who have powers to direct executive action which they cannot delegate. If on the informal correspondence failing to produce effect, an *application* desiring municipal action is made to the President or to any other municipal commissioner, that application must bear a one-anna stamp as required by paragraph 3 of Article 1 (*a*) of Schedule II to Act VII of 1870. Mere letters about conservancy, of which the Secretary or municipal officers may take what notice they please, are not liable to court fees. But applications to the Municipality or its members stand on a different footing and cannot be similarly ignored, and as they come clearly within the provision cited, they must be stamped. (L. R. No. 73, dated 14th January 1893; *vide* G. R. No. 960, dated 3rd February 1893.)

31. Under Section 79 of Act XV of 1872, every person solemnising a marriage and required under the Act to register the same, and every Marriage Registrar or Secretary to a Local Government having the custody, for the time being, of any register of marriages, shall, on payment of the proper fees, give a copy under his hand of any entry in any register of marriages in his custody. Such copies, or extracts certified to be true copies, or extracts by, or by order of, any public officer, and not chargeable under the Court Fees Act, are, unless granted for record in any public office or for any public purpose, liable to a stamp duty of 8 annas each under clause (*a*) of Article 22, Schedule I of the Indian Stamp Act, 1879, except in cases provided for in the Notification of the Government of India No. 1603,* dated 9th June 1882. A clergyman or priest not receiving pay from Government is when acting under Section 79 of Act XV of 1872 a public officer within the meaning of the above orders. Extracts from marriage registers furnished by such clergymen or priests are, therefore, not exempt from the payment of stamp duty. (G. I., F. & C., Nos. 1605, dated 9th June 1882, and 200, dated 13th January 1883; *vide* G. Rs. Nos. 6007, dated 1st September 1882, and 676, dated 25th January 1883.)

* *Vide* Article 6 (*b*) of the second Schedule to the G. of I. Notn. No. 2897 S. R., dated 7th June 1894, republished in the *B. G. G.* of 21st idem.

32. A one-anna receipt stamp is not required on endorsements on railway receipts sent through the Post Office under the value payable system. (G. I., F. & C., No. 5198, dated 29th September 1887; *vide* G. R. No. 7801, dated 14th November 1887.)

33. No formal application seems necessary either for the adjournment of an Income Tax appeal or to inform the Court that a compoundable offence (not being one under Sections 324, 335, 337 or 338, Indian Penal Code) has been compounded. In the case of offences under these four sections, formal application to compound appears necessary. To requests which need not be made as formal applications, the following paragraphs of High Court Circular 52A of 19th February 1884 appear applicable :—

'As the law does not require any formal application to be made for the return of documents under Section 142 or Section 144 of the Code of Civil Procedure, they may be returned to the persons entitled to receive them on their oral request and on taking their receipt in writing in the usual form.

'In case any such person chooses to make his request in writing, the paper, as this is optional, need bear no stamp.'

(L. R. No. 1582, dated 15th December 1887; *vide* G. R. No. 66, dated 5th January 1888.)

34. Under the following opinion of the Honourable the Advocate General of Bengal, shipping memoranda are essentially shipping orders, and are, therefore, liable to stamp duty as shipping orders :—

"The term 'shipping order' is not defined in the Stamp Act; but, from the words following the term in the schedule, it is clear that it is a document relating to the conveyance of goods on board a vessel. I am of opinion that it is immaterial what the exact form of words employed is, and think that any document made by a shipper and directed to the master of a vessel relating to the conveyance of his goods on board such vessel, which fulfils the functions of a shipping order, is a shipping order within the meaning of the Act, notwithstanding that the form of the document is not mandatory."

(G. I., F. & C., No. 6577, dated 31st December 1889; *vide* G. R. No. 242, dated 11th January 1890.)

35. A question having been raised whether stamp duty was properly levied by the Custom authorities on a letter addressed to them enquiring whether customs duty was levied on silver articles when sent from India to England, the following opinion was recorded by the Honourable the Advocate General :—

"I think that Article 1A of Schedule II of the Court-fees Act does not apply to an enquiry of the kind contained in the letter in question, as it is not presented by any person having dealings with the Government, and does not relate to such dealings. It is simply a request for information which the Customs authorities might not be bound to comply with, but on which they had no right to require a stamp."

(G. R. No. 1816, dated 8th March 1890.)

36. A court fee is leviable under Article 9 of Schedule I of the Court Fees Act in respect of all orders or proceedings passed after investigation under Bombay Act III of 1874. It may be doubted whether proceedings or orders under the Bombay Hereditary Offices Act come within the meaning of the word 'Revenue' used in Article 9 of Schedule I of

Act VII of 1870. But if an investigation has been made, they would be covered by the word 'Judicial' in that article (Section 71 of Bombay Act III of 1874). Purely departmental or office orders in which there is no investigation or appeal, such as orders under Section 64 (*c*) and mere orders to register facts already recorded according to law or under the orders of Government (Section 76) are of course not within the meaning of Article 9 of Schedule I of the Court Fees Act, as they are neither Revenue nor Judicial orders, and no copies of mere *orders* from an office unless they come under the description of an 'account, statement, report or the like,' are liable to fees. (L. R. No. 196, dated 16th February 1889; *vide* G. R. No. 1885, dated 9th March 1889.)

37. "Názirs are, I believe, in the habit of sending monies from time to time to Government Treasuries for safe custody and such monies are held by the Treasury officers in deposit until redrawn by the Názirs. For the purposes of such transactions, forms of a Pass Book and of a cheque are prescribed at pages 290 and 291 of the High Court Circulars, and I am clearly of opinion that in transactions of this nature between two Government officers no stamped receipt is necessary.

"If the case under reference was one of the above kind—as I think it must have been—no separate receipt was necessary at all. All that was requisite was an entry on the *Dr.* side of the Pass Book signed both by the Subordinate Judge and the Mámlatdár, and to this entry no receipt stamp need, I think, have been attached. If a separate receipt was passed or required, I do not understand why the occasion for it arose; but even assuming that it was necessary it would merely be an acknowledgment by one Government servant of the receipt of money which another Government servant had kept for him in safe custody, and it would not require to be stamped.

"Why, if the Subordinate Judge had determined that the money was forfeited to Government, he 'applied to the Mámlatdár for its repayment,' is another point which I find it difficult to understand. I should have thought that it would be sufficient for him to request the Mámlatdár to transfer the amount from the deposit account to the credit of Government under the head of 'Law and Justice,' or whatever may be the appropriate head for such receipts. But it seems probable that the Subordinate Judge intended the whole amount to be repaid to his Názir as a returned deposit, and then afterwards to remit it, *minus* 'the expenses of the sale,' if any, to the Treasury to be credited finally to Government. If this be the correct view of what took place, the receipt passed by the Subordinate Judge or by his Názir would still need no stamp. Viewed in any light, the transaction seems to have been nothing more than a transfer from the Treasury to the Court of money held by the former in

deposit for safe custody, and both parties to the transaction were acting in their capacity of officers of Government." (L. R. No. 1124, dated 3rd September 1880; *vide* G. R. No. 4858, dated 14th idem.)

38. When a Civil Court attaches money in the hands of Government, payable by Government to a person against whom a decree has been passed by the Civil Court, it is not necessary that the Civil Court should give to the Government officer in whose possession the money is, a receipt on a one-anna stamp before the money can be paid to the Court executing the decree. Such receipts are exempted from stamp duty under Article 15 (*b*) of Schedule II to the Stamp Act (I of 1879). If money which has been attached, under Section 272 of the Civil Procedure Code, is afterwards paid into the Court which attached it, the payment is a 'payment of money without consideration;' it is a mere transfer of the money from the custody of one authority to another, in order that the latter may disburse it to the party or parties entitled to it. (L. R. No. 519, dated 7th April 1892; *vide* G. R., J. D., No. 2443, dated 6th May 1892, and G. M. No. 4423, dated 25th idem.)

39. The memorandum of association of any society registered under Act XXI of 1860 (an Act for the registration of Literary, Scientific and Charitable Societies) does not require to be stamped. (G. I., F. & C., No. 2518, dated 22nd July 1890; *vide* G. R. No. 5606, dated 12th August 1890.)

40. No court fee is leviable on life certificates given to civil pensioners to satisfy the requirements of Article 1028 of the Civil Service Regulations. Such certificates may be granted by retired officials who before retirement exercised the powers of a Magistrate, as well as by Sub-Registrars and Magistrates, and do not fall within Schedule I of the Court Fees Act, 1870. Perhaps it may have been thought that the applications for such a certificate might fall within Article 1 (*b*), Schedule II, when presented to a Magistrate; but that article applies only to applications presented to Magistrates in their executive capacity. It would not apply to a request made to a Magistrate which might be made orally and which is made to him, not in his magisterial or executive capacity, but as it might be made to a retired Magistrate as a person of ascertained respectability and position. (L. R. No. 287, dated 25th February 1891; *vide* G. R. No. 1869, dated 12th March 1891.)

41. *Samachari chittis* serving the purposes of hundis or letters of credit are liable to stamp duty, and their execution on unstamped paper will render the writer liable to prosecution and punishment. (G. I., F. & C., No. 1757 S. R., dated 25th April 1893; *vide* G. R. No. 3523, dated 15th May 1893.)

IX.—AMOUNT OF DUTY LEVIABLE ON CERTAIN INSTRUMENTS.

1. Licenses under the Bombay Abkari Act do not require to be stamped. Counterpart agreements executed under Section 31 of that Act, if not attested, require a stamp of eight annas under Article 5 (*c*) of Schedule I of the Indian Stamp Act, 1879. (L. R. No. 986, dated 25th August 1879; *vide* G. R. No. 4631, dated 1st September 1879; *vide* also G. R. No. 8916, dated 4th December 1893.)

2. A comparatively light stamp duty was fixed for an assignment of a lease under Article 60, Schedule I of the Stamp Act in consideration of the heavy duty to which the lease itself is chargeable under No. 39 of the schedule. It would be out of place in India to prescribe any special duty for agreements under seal, as the law attaches no artificial effects to sealing. There is no reason why agreements by way of guarantee or indemnity should be treated differently from other agreements. (G. I., F. & C., No. 3439, dated 29th October 1880; *vide* G. R. No. 6096, dated 18th November 1880.)

3. The practice of affixing a one-anna court-fee stamp to applications or petitions of the nature of reminders should be discontinued, and in future the full stamp duty authorized by law should be required thereon. (G. R. No. 6322, dated 13th September 1882.)

4. Orders passed by a Revenue officer under Section 87 of the Bombay Land Revenue Code are not decrees or orders having the force of a decree passed by a Revenue Court within the meaning of Article 7, Schedule I of the Court Fees Act. For the purposes of certain sections of the Penal Code a formal or a summary inquiry under the Code is to be deemed (Section 196) a judicial proceeding, and the office of the authority holding such inquiry is to be deemed a Civil Court, but the order passed by a Revenue officer under Section 87 of the Code is not in any way binding upon the parties like a decree, and determines no question of right that may be at issue between them. To copies of such orders Article 9, and not Article 7, of the above schedule applies. (L. R. No. 391, dated 29th March 1883; *vide* G. R. No. 5630, dated 31st July 1883.)

5. If a deed of sale of a mortgage right were a transfer of an 'interest secured by a mortgage-deed' it would fall under Article 60 (*b*) of Schedule I of the Stamp Act. It is true that such a transfer is a 'conveyance.' The term 'conveyance' is defined by the Act, Section 3 (9), to mean 'an instrument by which property is transferred on sale.' But Article 21 of Schedule I, which covers 'conveyances' generally, expressly excepts conveyances which are transfers of the kind mentioned in Article 60. But if the mortgage interest transferred by the deed rested upon a verbal contract merely, or if it was an equitable

mortgage, Article 60 of Schedule I would not apply, and the deed of sale would fall under Article 21. (L. R. No. 1333, dated 3rd October 1883; *vide* G. R. No. 7828, dated 22nd idem.)

6. The marginally noted opinion of the Remembrancer of Legal Affairs, No. 1117, dated 4th September 1885, was communicated to the Inspector General of Registration and Stamps for information and guidance with reference to the following letter, No. 2046, dated 25th July 1885, from that officer :—

"A perusal of the correspondence confirms my opinion that the view taken by the Inspector General of Registration and Stamps is correct.

"2. The mistake committed by the Registrar is in saying that the property mortgaged by deed B consisted of two houses. It consisted of one house and a portion of another house. A lien was not created on property already hypothecated."

"I have the honour to submit translations, marked respectively A and B, of two deeds registered some months since, the one in the Viramgám, the other in the Parántij Sub-Registry Office in the district of Ahmedabad, concerning which, as regards the question of stamp duty, considerable correspondence has passed between the Registrar of Ahmedabad and myself, with the result that we cannot agree.

"2. Deed A I hold to be an instrument of further charge on which the stamp duty instead of being Rs. 5 should have, under the provisions of clause (*a*) of Article 30 of Schedule No. I of the General Stamp Act, amounted to Rs. 10, the sum advanced on mortgage being Rs. 1,000. I would shortly describe this deed as mortgaging without possession certain property not previously under hypothecation, and also at the same time *confirming (or mortgaging afresh) the hypothecation of two gardens previously mortgaged with possession.* It is on the latter circumstance that I rely in forming the opinion that the deed is an instrument of further charge on property already mortgaged with possession.

"3. Instrument marked B the Registrar of Ahmedabad holds to be on all fours as regards its character with instrument marked A, and it is on this point that I join issue with Mr. Reid. Instrument marked B purports to mortgage without possession certain houses and it recites the fact that a room in one of those two houses had previously been mortgaged with possession to the same mortgagee, but I do not understand that the present instrument again mortgages that room, and I rely on the following passages appearing in the deed for holding that opinion :—

'A room of this house No. 2 is in your possession under a deed of mortgage with possession previously executed to you * * * . The *remaining portion of the said house* * * * is given to you in mortgage without possession * * * * *.

'In consideration of the abovementioned amount the whole of house No. 1, and out of the house No. 2 the front portion of the ground floor and *excepting the mortgage kak on the room* the remaining portion of the said house are given in writing in mortgage.'

"4. The Registrar of Ahmedabad agrees with me in thinking that on the first named deed a stamp of Rs. 10 is required, holding as I do that the instrument imposes a further charge on property already mortgaged with possession. In the second case he is apparently of opinion that the instrument while mortgaging without possession two houses, a room in one of which was previously mortgaged

with possession, creates a further lien on that room and that is the point on which we differ, he holding that the stamp on the latter deed should have been one of Rs. 2 on the sum of Rs. 140 received by the property hypothecated, I holding that the stamp duty of Re. 1 actually paid is sufficient, seeing that as I construe deed B the already hypothecated room is not again pledged as security for a further charge thereon.

"5. The Registrar having asked that the point should be submitted to the Legal Remembrancer for opinion, I have the honour respectfully to request that these papers may be placed before the latter officer."

(G. R. No. 7500, dated 16th September 1885.)

7. Ordinary licensed stamp vendors are not officers of Government within the meaning of Article 12 (*b*), Schedule II, Act I of 1879. The article would apply to the Government officers who are appointed *ex-officio* vendors under the rules framed under Section 55 of the Stamp Act.

The stamp necessary for a stamp-vendor's security bond is the amount required by Article 14, Schedule I, of the Stamp Act. (L. R. No. 1324, dated 2nd October 1884; *vide* G. R. No. 3107, dated 14th idem.)

8. Applications to a Collector under Section 22 of the Local Boards Act are liable to a court fee of eight annas under Act VII of 1870, Schedule II, Article 1 (*b*). (G. R. No. 3725, dated 8th May 1885.)

9. The record of a Sub-Registrar's reasons for refusing to admit a document to registration is not 'a revenue or judicial proceeding' within the meaning of Article 9, Schedule I of the Court Fees Act, and certified copies of such reasons are chargeable with stamp duty under Article 22, Schedule I of the Indian Stamp Act. (L. R. No. 394, dated 25th March 1886; *vide* G. R. No. 2752, dated 12th April 1886.)

10. A mukhtyárnáma which authorizes three persons to exercise all khoti privileges and to recover all khoti dues cannot be considered as authority to act in a single transaction. A document of such nature comes under Article 50 (*c*) of Schedule I of Act No. I of 1879, and should be written on a stamped paper of Rs. 5. (G. R. No. 1365, dated 3rd March 1887.)

11. Declarations of trust should be charged with stamp duty on an *ad valorem* scale, similar to that prescribed for bonds in Article 13 of Schedule I of the Stamp Act, subject, however, to a maximum duty of Rs. 15. (G. I., F. & C., No. 6766, dated 24th December 1887; *vide* G. R. No. 317, dated 17th January 1888.)

12. An application or petition presented by a farmer of ábkári or opium revenue to a Collector, Assistant Collector or Mámlatdár requires a one-anna stamp. (G. R. No. 3174, dated 19th May 1888.)

13. An instrument evidencing an ordinary pawn transaction where money is borrowed on the pledge of moveable property, and the sum borrowed exceeds Rs. 20, should be stamped as a mortgage-deed

under Article 44 of Schedule I to the Stamp Act, 1879. (G. I., F. & C., No. 5232, dated 5th November 1890; *vide* G. R. No. 8405, dated 25th idem.).

14. A question having been raised as to the amount of stamp duty leviable on an application for license to manufacture 200 lbs. of fireworks under No. 31, read with Nos. 9 and 8, of the rules issued in Government Notification No. 4116, dated 5th July 1887, the Honourable the Advocate General expressed his opinion (No. 46, dated 21st May 1892) that the 3rd clause of Rule 9 was applicable and that a fee of Rs. 5 only was payable. (G. R. No. 4914, dated 11th June 1892.)

15. The following decision of the High Court of Calcutta as to the amount of stamp duty payable on the entrance certificates issued by the Uncovenanted Service Family Pension Fund, Calcutta, is to be acted upon in all similar cases :—

"**High Court of Judicature at Fort William in Bengal.**

CIVIL APPELLATE JURISDICTION.

The 30th June 1892.

Present:

The Honourable Sir William Comer Petheram, Kt., *Chief Justice.*

The Honourable Henry Thoby Prinsep and The Honourable Jones Quaint Pigot, } Two of the Judges of this Court.

"Reference under Section 46, Act I of 1879, from the Officiating Secretary to the Board of Revenue, Lower Provinces, No. 1587-B, dated 20th November 1891.

(Stamp Reference No. 13 of 1891.)

"PETHERAM, *Chief Justice.*—The question referred to us by the Board of Revenue is what is the stamp which an entrance certificate under the rules of the Uncovenanted Service Family Pension Fund, Calcutta, should bear. By the contract which is evidenced by the document, the person to whom the certificate is issued in consideration of a money payment secures an income after his death for a time to another person, subject to certain contingencies; this is, I think, a contract of assurance, and the document which evidences such a contract is, I think, a life policy and is within Section 3 and Section 15 of the Stamp Act. The amount insured is quite uncertain, in every case, and it is impossible to predict whether anything or, if anything, what, will ever become payable by the fund under the contract, and the contract cannot, I think, be defined as an insurance for any particular amount, and therefore cannot be for an amount which exceeds Rs. 1,000. That being so, and it being an insurance, it must be a life policy for an amount which does not exceed Rs. 1,000, and the stamp duty on such an instrument is six annas.

"It is, I think, clear that such an instrument as this is not within the scope of Section 25, sub-section (*c*) of that section, which is the only one within which it has been said to be included, deals with contracts under which, for some executed consideration, money becomes immediately due though payable by fixed periodical payments, and it is, I think, enough to say that that is not the present case, and there is no provision in the Act which can relate to the valuation of annuities secured by life policies.

"My answer to the question is that the stamp duty which an entrance certificate under the rules of the Uncovenanted Service Pension Fund should bear is six annas.

"PRINSEP, *J.*—I agree that, read with the rules of the Uncovenanted Service Family Pension Fund, this paper may be regarded as a life policy, and also that it does not come within Section 25 of the Act. We have not the means of ascertaining its value. That can be obtained only by such a calculation as is not open to us. In the absence of such information we must take it in the most favourable way to the person being taxed,—that is to say, we must assess it at the lowest possible value below 1,000 and it should, therefore, be assessed at six annas.

"PIGOT, *J.*—I agree."

(G. I., F. & C., No. 2460, dated 11th June 1892; *vide* G. R. No. 5551, dated 7th July 1892.)

16. Clause 16 (*a*) of the Government of India's Notification No. 4650,* dated 10th September 1889, sanctioning reductions and remissions of court fees under Section 35 of the Court Fees Act, VII of 1870, does not apply in the case of a petition made to a Collector exercising the powers of a Commissioner under Section 27 of the Income Tax Act II of 1886. The court fee payable on such application or petition is eight annas under Schedule II (1) (*b*), paragraph 2 of the Court Fees Act, 1870. (G. I., F. & C., No. S. R.-3046, dated 15th July 1893; *vide* G. R. No. 5692, dated 7th August 1893.)

* Printed at pp. 342–345 of the Compilation of General Rules

X.—DUTY IN PAUPER SUITS.

1. The only privilege of a person who is allowed by a Court to institute a suit *in formâ pauperis* is, that he is not liable for any court fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit. There is apparently no law which exempts him from paying the stamp duty on any document which requires to be stamped under the provisions of the General Stamp Act. Unless, therefore, the case comes within clause 13† of Section 15 of the Act (No. 18 of 1869), duty must be paid. (L. R. No. 538, dated 10th June 1878; *vide* G. R. No. 3098, dated 19th idem.)

† *Vide* Article 9, Schedule II, of the Indian Stamp Act, 1879.

2. Article No. 167,‡ Schedule II, Act IX of 1871, does not apply to applications on the part of Government under Section 309§ of the Civil Procedure Code for the recovery of pauper costs, and no rule of limitation exists in respect of such applications. Section 309 directs that "Government shall recover such costs in the same *manner* as costs of suits are recoverable," but this refers only to the method of procedure. It is a well-established rule that the king is not bound by any statute, if he be not expressly named to be so bound (Broom's Legal Maxims, 5th Edition, page 72; Maxwell on the Interpretation of Statutes, p. 112). "Statutes of Limitation have always been held not to bind the Crown, except when named." (Maxwell on the Interpretation of Statutes, p. 117.) Act IX of 1871 contains a special provision for any suit in the name of the Secretary of State for India in Council, a period of sixty

‡ Cf. No. 179 of Schedule II of the Indian Limitation Act XV of 1877.

§ Cf. Section 411 of the Civil Procedure Code, 1882.

years being allowed as the period of limitation (Article 150,* Schedule II). But neither the Crown nor the Secretary of State is mentioned in connection with applications for execution. The East India Company no longer represents the Crown, and Section 24 of Statute 24 and 25 Vic., C. 67, expressly provides that no law or regulation made by the Governor General in Council * * * * shall be deemed invalid by reason only that it affects the prerogative of the Crown. (L. R. No. 696, dated 19th October 1875; *vide* G. R. No. 6163, dated 1st November 1875.)

* Cf. No. 149 of Schedule II of the Indian Limitation Act XV of 1877.

3. Collectors are authorized to pass, without the sanction of Government, charges incurred in making applications or darkhásts in Civil Courts for the recovery of stamp charges on behalf of Government from the parties concerned in pauper suits.

They may also, if they see sufficient cause, remit to the party from whom it may be recoverable after judgment, the stamp duty itself in such suits. (G. R., F. D., No. 3945, dated 14th September 1877, and G. R. No. 6820, dated 14th November 1877.)

XI.—KINDS OF STAMPS TO BE USED IN CERTAIN CASES.

1. Whereas copies or extracts certified to be true copies or extracts of baptismal, marriage, and burial certificates granted by ministers and marriage registrars are generally furnished on printed forms for which impressed sheets of stamped paper cannot be used without inconvenience; therefore in exercise of the powers conferred by Section 9 of the Indian Stamp Act, 1879, the Governor General in Council is pleased to make the following rule:—

The stamp duty payable under Article 22 of Schedule I to the Indian Stamp Act, 1879, on copies or extracts certified to be true copies or extracts of baptismal, marriage, and burial certificates shall be denoted by means of adhesive court-fee labels.

(G. I., F. & C., Notification No. 2036, dated 30th June 1882, republished in the *Bombay Government Gazette* of 6th July 1882.)

NOTE.—The officer issuing the certificates should cancel the adhesive court-fee label affixed thereto by writing his name across it. (G. I., H. D., No. 3—173—187, dated 11th September 1882; *vide* G. R. No. 6722, dated 28th idem.)

2. India Revenue (Receipt) stamps should be used for proxies given by females at Local Board elections. (G. R. No. 1747, dated 28th February 1885.)

3. Promissory notes drawn or made in British India and chargeable with a duty of more than one anna are not among the instruments that may be stamped with impressed labels; the legal and regular method of paying the stamp duty is by the use of impressed sheets, or in the cases of 6, 10 and 12 annas, for which no impressed sheets exist, by the use of hundi stamps. (G. I., F. & C., No. 6623, dated 15th December 1887; *vide* G. R. No. 302, dated 14th January 1888.)

XII.—INSTRUMENTS NOT DULY STAMPED.

1. Copies requiring to be stamped under Act VII of 1870 are not of any validity unless properly stamped, and cannot be furnished or received by any public officer. (G. I., F. D., No. 231, dated 18th January 1877; *vide* G. R. No. 534, dated 27th idem.)

2. The period during which an instrument remains impounded under the provisions of Chapter IV of the Stamp Act, 1879, cannot be deducted in computing the period of limitation mentioned in Section 34 of the Registration Act, 1877. In the case of all impounded instruments forwarded to the Collector by Registrars and Sub-Registrars under Section 33 of the Stamp Act the adjudication should be made by the Collector with as little delay as possible. (L. R. No. 1524, dated 22nd December 1881; *vide* G. R. No. 128, dated 10th January 1882.)

3. The procedure to be followed in enforcing the payment of insufficient stamp duty and penalty with respect to instruments sent to Collectors under clause 2 of Section 35 of the Indian Stamp Act, 1879, is that laid down in the letter from the Government of India No. 4310,* dated 28th October 1875. (G. R. No. 3016, dated 28th April 1893.)

* *Vide* order 1 (XIII) *infra*.

XIII.—ADJUDICATION AS TO STAMPS.

1. When the Collector has received a document and given his opinion under Section 39† of the Stamp Act XVIII of 1869, and the presenter of the document thereafter declines to pay the full sum adjudged, the Collector may consider the instrument as having been presented under Section 23.‡ He must then first consider whether there is a case for prosecution under Section 29§ or 36, and if he determines to prosecute he can detain the instrument, but if he does not intend to prosecute he should return the instrument to the owner. (G. I., F. D., No. 4310, dated 28th October 1875; *vide* G. R. No. 6336, dated 11th November 1875.)

† *Vide* Section 30 of the Indian Stamp Act, 1879.

‡ *Vide* Section 33, *ibid.*

§ *Vide* Section 61, *ibid.*

2. In all such prosecutions Collectors should bring to the notice of the Magistrate the loss of revenue due to the non-stamping of the instrument. (G. R. No. 2641, dated 14th April 1893.)

3. It is clear that Rule 15‖ of the Rules under the Indian Stamp Act I of 1879 laid down in the Government of India's Notification No. 875, dated 26th February 1881, is a rule under Section 32, and relates solely to the fee under Section 30. As to the duty on instruments brought to the Collector under Section 30, it is said in Section 31 that the duty determined by the Collector may be *paid*, and when the Collector has certified by endorsement on the instrument that the full duty chargeable has been paid, the instrument so endorsed "shall be held to have been duly stamped." The Collector appears to hold that these words point to a payment in cash. But Section 9

‖ Cf. Rule 17 of the rules under Sections 9, 15, 17, 32, 51 and 56 of the Indian Stamp Act published under G. of I. Notn. No. 2170, dated 22nd May 1891, printed at pp. 314—319 of the Compilation of General Rules.

says that, except in specially excepted cases, all duties shall be paid by means of stamps, and Section 31 does not specially provide that the duty paid under it shall be paid in cash. The duty under Section 31 should, therefore, be paid by means of stamps, and such payment should be indicated on the instrument by the stamps used. (G. R. No. 5568, dated 26th September 1881.)

4. In the case of such an agreement as that executed by P. R. A. to H. R. A. for a term of 11 years stipulating to pay annually 4 khandis of Dodka or Ghonsalvel rice in husk and 1,050 bundles of hay, the stamp duty should be fixed by the Collector under paragraph 3 of Article 39 (*a*) of Schedule I of the Stamp Act in accordance with what he considers to be 'the value of the average annual rent reserved.'

The practice followed by the officers of the Registration Department in cases of instruments like the one in question is to draw the attention of the parties presenting such deeds to Section 27 of Act I of 1879 which requires that 'the consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty shall be fully and truly set forth therein' and to the penalties imposed by Section 63 of the same Act. This leads to the defect in documents being supplied, that is, the value of the consideration is shown therein and the stamp duty determined accordingly. In cases in which the parties refuse to express the money value, the documents are forwarded to the Collector of the district for the adjudication of the proper stamp duty leviable thereon. This is a very reasonable practice. (L. R. No. 10 B., dated 26th January 1883; *vide* G. R. No. 1238, dated 16th February 1883.)

XIV.—COMPOSITION OF STAMP DUTY.

1. The Presidency Municipalities, the Trustees of the Port of Bombay, and the Commissioners for making improvements in the Port of Calcutta are empowered, by the enactments constituting or incorporating them, to borrow money for certain purposes by way of debenture, on the security of the rates, taxes or dues which they are authorized to levy or impose.

Under the Local Authorities Loan Act, other bodies corporate and Municipalities may also be authorized to borrow money upon the security of the funds which they administer, or the taxes which they levy.

The bonds or debentures issued by all these bodies, and coupons issued with such debentures are, in the absence of any special exemption, chargeable with stamp duty, at the rate of about $\frac{1}{2}$ per cent.

The question whether stamp duty is chargeable on the renewal and sub-division of such debentures, is open to argument; but whether stamp duty is chargeable in such cases or not, the interests

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of the stamp revenue necessitate the attendance of the parties at the office of the Collector of Stamp Revenue, in order to the stamping (without charge) of the new debentures. The Government of India is not willing to relieve such debentures altogether from the payment of stamp duty; but it is prepared to exempt coupons issued with them from the separate payment of duty, and is anxious to remove, as far as is compatible with the due protection of the stamp revenue, the inconvenience occasioned to the debenture-holders by the necessity for attendance at the Stamp Office on each case of renewal or sub-division.

His Honour the President in Council thinks that these objects may be attained if the above-mentioned bodies corporate are willing, on the issue of any debentures, to compound for the stamp duty chargeable thereon by the payment in a lump sum of ½ per cent. on the total amount of the loan. There is no special provision in the law authorizing such a composition; but, on payment by any of the corporate bodies referred to, under such a composition, the Government of India will exempt* the debentures from any stamp duty with which they might otherwise be chargeable whether on issue, renewal or sub-division.

The payments made under such compositions will be credited to stamp revenue.

The serial number, amount and date of each of the debentures issued should be communicated to the Government of India to enable them to issue the needful notification exempting the debentures from the payment of stamp duty under these orders. (G. I., F. & C., Nos. 3646, dated 13th November 1880, and 3323, dated 6th October 1881; *vide* G. Rs. Nos. 6472, dated 8th December 1880, and 6273, dated 25th October 1881.)

2. Cheques issued by Local Boards do not come within the exemption contemplated in the foregoing orders. (G. R. No. 1025, dated 21st December 1885.)

XV.—REFUNDS.

1. Local Governments are authorized to allow refunds or renewals of spoiled or useless stamps, or the repurchase of stamps not required, provided that application for renewal or refund be made within one year from the date of purchase of the stamp, or one year from the date on which the stamp has been spoilt, or rendered useless. (G. I., F. & C., No. 125, dated 14th January 1881; *vide* G. R. No. 601, dated 28th idem.)

2. The Commissioners in the Bombay Presidency, the Superintendent of Stamps, Bombay, and the Political Resident, Aden, are authorized to grant the refund of the value of spoilt or useless general

* For the exemptions sanctioned by the Government of India under this provision *vide* Article 7 (*c*) of Second Schedule to Government of India Notification No. 2897 S. R., dated 7th June 1894.

stamps in cases in which application for the refund is made after six months, but within one year from the date of the purchase of the stamp or from the date on which the stamp is spoilt or rendered useless. (G. I., F. & C., Nos. 3926, dated 23rd October 1883, 2075, dated 31st December 1883, and 445, dated 25th April 1885; *vide* G. Rs. Nos. 8409, dated 15th November 1883, 338, dated 14th January 1884, and 3938, dated 16th May 1885.)

3. The Commissioner in Sind, the Commissioners of Divisions, the Superintendent of Stamps, and the Political Resident at Aden are authorized to exercise, within their respective charges, the power conferred by the Government of India on the Local Government of granting refunds of the value of impressed court-fee stamps and court-fee adhesive labels. (G. R. No. 819, dated 6th February 1888.)

NOTE.—By Government Resolution No. 1037, dated 7th February 1891, the power granted to Commissioners by the Resolution of 6th February 1888 has been delegated to Collectors.

4. "I am directed to acknowledge the receipt of your letter No. 6099, dated the 27th July 1892, and of its enclosures, regarding an application from Messrs. _____ for refund of the value of certain spoiled stamps amounting to Rs. 283.

"Under the law, applications for refund should be made within six months from the date on which the stamps were purchased, spoiled or rendered useless. In order to meet cases of undue hardship, this period was extended to twelve months by the Resolution in this Department No. 125*, dated 14th January 1881. In the present case, it appears that the stamps were spoiled or rendered unfit for use in each case more than one year, and in some instances more than six years, before an application for refund was made to the Collector of ——, and no satisfactory explanation is given of the cause of the delay. In many cases, too, the stamps become useless merely because by careless keeping they were torn or soiled. Such a case as this is not of the kind contemplated when provision was made for the refund of the value of spoiled or useless stamps, and the Governor General in Council is unable to sanction the refund applied for.

* *Vide* No. 60 dated 2 Januar order 1 *supra*.

"As regards the suggestion made by the Commissioner in Sind that applications of the kind might, in future, be made by applicants to the Government of India direct, I am to state that the Government of India prefers that they should be submitted through the Local Government." (G. I., F. & C., No. S.R.-3314, dated 10th August 1892; *vide* G. R. No. 7042, dated 5th September 1892.)

5. Sections 52 and 54 of the Indian Stamp Act, 1879, apply to all kinds of stamps used under that Act, but great caution should be used in refunding the value of "adhesive labels." (G. I., F. D., No. 911, dated 6th June 1879; *vide* G. R. No. 3309, dated 23rd idem.)

6. The words 'deducting one anna for each rupee or fraction of a rupee' which occur in clause (*c*),

Section 53 of the Indian Stamp Act, 1879, are not applicable to clauses (*a*) and (*b*) of that section. Those words are applicable to clause (*c*) only.

(2) The distinction between clauses (*a*) and (*b*) and (*c*) is pointed.

(3) Clauses (*a*) and (*b*) are applicable to cases where fresh stamps are given in lieu of spoiled or misused stamps, but such new stamps when so given are in (*a*) case to be of the same 'description and value,' and in (*b*) case of any other 'description to the same amount in value,' so in each of these (*a*) and (*b*) cases the *same* value of the spoiled stamps is to be given and no deduction is provided for, whereas in (*c*), which provides for a money return, 'the same value in money, deducting one anna for each rupee or fraction of a rupee,' is to be given.

(4) The words 'deducting one anna for each rupee or fraction of a rupee' can refer only to the preceding words 'the same value in money' as the thing from which the deduction is to be made.

(5) Section 54 aids this construction.

(6) The effect of Section 53 may be summarized thus:—Where fresh stamps are given in exchange for spoiled or misused stamps, stamps of the same value as the spoiled or misused stamps are to be given and no deduction made, but where money is given in exchange for spoiled or misused stamps, a deduction of one anna is to be made from each rupee or fraction of a rupee of the value of such spoiled or misused stamp. (Adv. Gen. No. 106, dated 12th November 1880; *vide* G. R. No. 6471, dated 8th December 1880.)

7. As the words used in Section 53 of the Stamp Act 'in any case in which allowance is made for spoilt or misused stamps' are in the plural, the practice of deducting one anna in the rupee on the aggregate value of the stamps, and not on the value of each separate stamp tendered, is most in accordance with the apparent intention of the Legislature. In the cases falling under Section 54 also the deduction should be on the aggregate value. (G. Rs. Nos. 1519, dated 22nd February 1883, and 9035, dated 16th November 1892.)

8. When the Collector of a District sanctions a refund or renewal he should then and there record his reasons for granting such refund or renewal, should punch or mark the stamped paper in such a way that it can never be presented again, and should then forward it for destruction to the Superintendent of Stamps. (G. I., F. D., No. 3767, dated 23rd October 1873; *vide* G. R. No. 6077, dated 4th November 1873.)

9. No. 14* of the rules under the Stamp Act, 1879, laid down in the Government of India's Notification No. 196, dated 19th April 1879, does not require that the affidavits and depositions should be put in or made before the Collector himself personally. As the duties in question are rather ministerial and formal than judicial, there is no legal objection to

* *Vide* Rule 18 of the rules published in the G. of I. Notn. No. 2170 of 22nd May 1891, printed at pp. 314—319 of the Compilation of General Rules

the Collector delegating the inquiry, if he thinks it necessary or expedient, to a Mámlatdár or Mahálkari, provided that he passes the final order himself. (L. R. No. 28, dated 5th January 1880; *vide* G. R. No. 211, dated 14th idem.)

10. In the case of an impressed stamp which has been spoiled by an agreement having been written upon it which the person who was to have executed that agreement in his own sole name subsequently refused to sign, the proper course is to deal with the case under Section 54 of the Stamp Act. That section applies to stamps for which the owner has no immediate use and which have not been spoiled or rendered unfit or useless *for the purpose intended*. This is precisely the case in question. The stamp is spoiled and rendered unfit and useless for any other purpose, but not for the purpose for which it was intended to be used, and the owner of it has no immediate use for it. Probably this section was primarily intended to apply when a stamp had not been used or spoiled at all, but it is so worded—perhaps intentionally—as to cover both cases. (L. R. No. 278, dated 1st March 1881; *vide* G. R. No. 1480, dated 12th idem.)

11. The heir of a deceased person has a right to claim a refund on a spoiled stamped paper which has come into his possession as heir. (G. R. No. 1073, dated 15th February 1882.)

12. Section 17, clause (*b*) of the Arms Act, XI of 1878, empowers the Governor General in Council to fix a fee payable in respect of a license "granted;" and it seems doubtful whether the fee can properly be retained when such application is refused. In the event, therefore, of an application for a license under the Arms Act, bearing the requisite fee in the shape of impressed stamps, being refused by the Executive authorities, a refund of the stamp fee paid should be allowed. (G. I., H. D., No. 30-1086, dated 10th June 1879; *vide* G. R. No. 3277, dated 21st idem.)

13. An application for a license under the Petroleum Act VIII of 1881 should bear the stamp suitable for an application, and the stamp for the license should be separate. If the application is refused, the refund of the cost of the stamp for the license may be claimed under Section 54 of the Stamp Act, 1879. An application should not be made on a stamped paper intended for the license, but where such a procedure has been wrongly allowed, a refund of the stamp fee *minus* the value of the stamp which should have been affixed to the application, and *minus* also the deductions prescribed in Section 54 of the Stamp Act, may be granted. (G. I., H. D., No. 813, dated 4th May 1888; *vide* G. R. No. 3366, dated 25th idem.)

14. Refund of the value of stamps affixed to bills of exchange which have been used as cover and sent to home firms or home partners or directors, who are payees, should not be granted. (G. I. F. & C., No. 2996, dated 17th June 1889; *vide* G. R. No. 4967, dated 11th July 1889.)

15. The Collector being a person empowered by law (*viz.*, by the Stamp Act and the Rules made under it) to take evidence has authority under Section 4 of the Indian Oaths Act, 1873, to administer an oath. The proceeding before the Collector under Section 51 of the Stamp Act may not perhaps be a judicial proceeding within the meaning of Section 193 of the Penal Code. That section, however, is not confined to cases of giving false evidence in judicial proceedings, and in the opinion of His Excellency the Governor General in Council, the punishment provided for giving false evidence in cases other than judicial proceedings is likely to be ample for the purposes of the enquiry regarding refunds of the value of spoilt stamps. (G. I., F. & C., No. 2698, dated 13th September 1879; *vide* G. R. No. 5212, dated 29th idem.)

16. Stamps sold to the public, when returned, will generally be more or less soiled or disfigured, and should not be re-issued. If a refund of the value of any such stamp is granted, the Collector should follow the course laid down in the Government of India's Circular No 3767, dated 23rd October 1873 (*vide* G. R. No. 6077,* dated 4th November 1873). Those stamps, however, which are taken back from a stamp vendor or his heirs may be placed in store and re-issued. (G. I., F. D., No. 6295, dated 16th November 1874; *vide* G. R. No. 6429, dated 5th December 1874.)

*Vide order 8 (XV) *supra*.

17. The Government of India authorize the refund of probate duty when the Administrator General of Bombay shows that the registered claims against an estate amounts to such a sum as, if they had been paid debts, would have entitled him to a refund of stamp duty under the provisions of Section 19 B of Act XIII of 1875. (G. I., F. D., No. 3168, dated 19th December 1876; *vide* G. R. No. 41, dated 5th January 1877.)

18. Under Section 13 of the Court Fees Act, 1870, an appellant is entitled to receive from the Collector the full amount of court fee paid on the memorandum of appeal without any deduction on production of the certificate of the Appellate Court, and no further sanction is necessary for the refund of such fee. (G. R. No. 8912, dated 13th December 1890.)

19. The rules for the refund of the value of court-fee stamps circulated with Government Resolution No. 819,† dated 6th February 1888, do not appear to contemplate the return of the value of stamps which have been cancelled; for Section 30 of Act VII of 1870 indicates that a document bearing a court-fee stamp should not be acted upon in any way until the stamp is cancelled, and the fact of a stamp being cancelled is, therefore, evidence that it has been used. (L. R. No. 1975, dated 5th December 1891; *vide* G. R. No. 8896, dated 23rd idem.)

†Printed at p. 345 of the Compilation of Genera. Rules.

20. Stamp duty on a plaint in any suit in which a Civil Court may decide, after once admitting the plaint, that it has no jurisdiction and which, after such decision, the plaintiff does not for any cause

wish to prosecute elsewhere, should not be refunded. It is a case unlikely to occur frequently that a plaint will be presented to a Court not having jurisdiction, that the plaint will be at first admitted but afterwards returned on the ground of no jurisdiction, and that the plaintiff will then elect to abandon his claim. Even under the circumstances, the plaintiff will have put the Court in motion and obtained a decision of the question of jurisdiction, and it is, therefore, not expedient to take any special measures to relieve the plaintiff from the payment of the stamp duty necessary in such cases. (G. I., F. D., No. 5079, dated 19th August 1874; *vide* G. R. No. 4702, dated 1st September 1874.)

21. Section 42 of the Indian Stamp Act does not require that the application on which the Chief Revenue Authority may refund a penalty should be made to the Chief Revenue Authority himself. That section only requires (*a*) that the application should be made in writing within one year, and (*b*) that the refund should be made by the Chief Revenue Authority.

A comparison of Section 42 with Section 36 leads to the conclusion that the Legislature did not require the application under Section 42 to be made direct to the Commissioner.

For Section 36 expressly requires that an application on which the Collector may act must be made *to him*, but specifies no period within which it must be made, and does not require it to be in writing.

While Section 42 does not require the application to be made to the Commissioner, but does specify the period within which it must be made, and requires that it should be in writing.

The inference is that an application, for refund, to the Collector may be made to him at *any* time, but that if the Commissioner is to exercise his power of making a refund of the *whole* penalty, then the application must have been made (though not necessarily to him direct) (*a*) in writing, and (*b*) 'within a year from the date of the payment.' (L. R. No. 1789, dated 29th December 1892; *vide* G. R. No. 2979, dated 27th April 1893.)

XVI.—REMISSIONS AND EXEMPTIONS.

1. Court fees can only be remitted under Section 35, Act VII of 1870, by the Governor General in Council. No order has hitherto been made under that section, remitting the fee payable by a pauper who wishes to make an application to a revenue officer. But it is not absolutely necessary that there should be an application from the person entitled to succeed as heir to a deceased inámdár in order that the Mámlatdár may have authority to enquire and determine whose name ought to be substituted in his records for the name of the deceased. There would be no illegality in the Mámlatdár's starting such an inquiry *proprio motu* and taking the statement of the would-be applicant, if necessary; and this course

may be adopted in cases in which there is sufficient proof that the person claiming to be recognized as heir to an inám or khálsa holding is unable to pay the requisite stamp duty on a formal application for the purpose. (L. R. No. 929, dated 12th July 1883; *vide* G. R. No. 5712, dated 2nd August 1883.)

2. A statement signed by the officer issuing the certificate referred to in the notification* of the Government of India No. 1603, dated 9th June 1882, should be made thereon showing the grounds on which such certificate is issued without the payment of stamp duty. (G. I., H. D., No. 3-173-187, dated 11th September 1882; *vide* G. R. No. 6722, dated 28th idem.)

* *Vide* Article 6 (*b*), Schedule II, to G. of I. Notn. No. 2897 S. R., dated 7th June 1894.

3. The exemption specified in clause 8 (*c*) of the Second Schedule annexed to the Notification† of the Government of India No. 5855, dated 22nd November 1889, showing the instruments exempted, under Section 8 of the Indian Stamp Act, I of 1879, from the payment of stamp duty, covers leases and counterparts in the case of Kasbatis. (L. R. No. 568, dated 20th April 1892; *vide* G. R. No. 3908, dated 5th May 1892.)

† *Vide* clause 9 (*d*) of the Second Schedule to G. of I. Notn. No. 2897 S. R., dated 7th June 1894.

4. In exercise of the powers conferred by Section 35 of the Court Fees Act (VII of 1870) the Governor General in Council is pleased to remit in the Presidency of Bombay the fees chargeable under Article 1, clauses (*b*) and (*c*) of Schedule II of the said Act on applications made to a Collector or other Revenue officer or to any Chief Controlling Revenue or Executive authority for permission to cut and remove junglewood for fuel or thorns for fencing from lands which are unalienated and unoccupied within the meaning of the Bombay Land Revenue Code, 1879. (G. I. Notn. No. S. R.-2325, dated 1st June 1893; *vide* G. R. No. 4588, dated 26th idem.)

5. In exercise of the power conferred by Section 35 of the Court Fees Act, VII of 1870, and in supersession of the orders contained in clause 6 (under heading A) of the notification in the Department of Finance and Commerce No. 4650‡ dated the 10th September 1889, the Governor General in Council is pleased to direct that the fee chargeable on appeals from orders under clause (*c*) of Section 244 of the Code of Civil Procedure (Act XIV. of 1882) shall be limited to the amounts chargeable under Article 11 of the second schedule to the Court Fees Act, 1870. (G. I., F. & C., Notn. No. 4344-S.R., dated 6th October 1893, republished under G. N. No. 7435, dated 11th idem, at page 952 of the *B. G. G.* of 12th idem.)

‡ Republished at pages 807 to 810 of Part I. of the *B.G.G.* of the 19th September 1889.

XVII.—CANCELLATION OF STAMPS.

1. The importance of punching out from the stamps the figure-head and destroying the piece before taking action upon the documents to which the stamps may be attached, should be impressed upon all Courts and officers who have to deal with

court-fee stamps. (G. I., F. D., No. 831, dated 31st January 1874; *vide* G. R. No. 868, dated 17th February 1874.)

2. It is desirable that the responsibility of officers presiding over Courts to satisfy themselves that all stamps affixed to documents in their respective Courts are properly defaced, should be strongly impressed upon them. (G. R. No. 2357, dated 13th April 1877.)

3. Government must impress upon heads of offices the necessity of taking strict measures to enforce the rule regarding the punching of stamps, and will notice with displeasure any omissions reported hereafter. (G. R. No. 3986, dated 20th June 1882.)

4. The Inspector-General of Registration and Stamps should in his annual reports regarding the stamp inspection work performed by his Department specify the offices in which stamps were found unpunched. (G. R. No. 7088, dated 5th September 1884.)

5. Under Act VII of 1870, Section 30, court-fee labels are cancelled by punching out the figure-head, but the Record-keeper of every Court should, when a case is decided and the record consigned to his custody, punch a second hole in each label distinct from the first and note the date of his doing so at the same time. The second punching should not remove so much of the stamp as to render it impossible or difficult to ascertain its value or nature. These directions apply only to adhesive labels used under the Court Fees Act, and impressed stamps used for denoting court fees need not be cancelled or punched otherwise than as required by Section 30 of the Court Fees Act. (G. I., F. D., No. 1763, dated 24th July 1873; *vide* G. R. No. 4481, dated 5th August 1873: and G. I., F. & C., No. 3047, dated 5th September 1883; *vide* G. R. No. 7419, dated 5th October 1883.)

6. Section 26 of the Court Fees Act contemplates that the stamps to be used to denote any fee chargeable under that Act may be either impressed or adhesive or partly impressed and partly adhesive; and yet Section 30 enacts that the stamp is in every case to be cancelled before the document which bears it is acted upon in any Court or office. From this the necessary inference is that the Legislature intended the figure-head of the stamp to be punched out, whether the stamp is adhesive or impressed, and this direction of the law is binding upon all Courts and officers. (L. R. No. 1046, dated 3rd August 1883; *vide* G. R. No. 6641, dated 8th September 1883.)

7. Section 30 of the Court Fees Act, VII of 1870, does not justify the cancellation of the stamp on a document the moment the document is presented; and it is only necessary for a Court or officer to cancel the stamp when the document is about to be

filed or acted upon. It follows that if an appeal or application is not accepted by reason of its being time-barred or for other *primâ facie* reason, the Act does not authorize the cancellation of the stamps which it bears. (L. R. No. 888, dated 2nd July 1884; *vide* G. R. No. 6267, dated 4th August 1884.)

8. The interpretation of Section 30 of the Court Fees Act contained in the following extract from a letter from a Subordinate Judge, in so far as it applies to copies of documents deposited in his Court, like the two therein referred to, pending his decision as to whether they shall be received, *i. e.*, filed and acted upon or not, is correct:—

"Paper marked L in Suit No. 165 of 1889 is a copy of a Magistrate's order put in by the defendant along with his written statement.

"Paper marked C in Suit No. 147 of 1889 is a copy of an order passed in a miscellaneous proceeding and was produced under Section 138 of the Civil Procedure Code.

"These papers were kept along with the lists of papers with which they were produced and simply marked for identification. They will not be filed or acted upon in any way unless and until they are found relevant, and either admitted or proved. The Court will have no power to look at them so long as the formalities above indicated have not been gone through. If the parties fail to fulfil these necessary conditions, these papers will have to be returned to the parties producing them, and in that case their copies are not by law required to be kept on the record; whereas a document which has been filed and thus acted upon cannot be returned without a copy under Section 144 of the Civil Procedure Code. The first paragraph of Section 30 of the Court Fees Act requires that before a document is filed or acted upon, its stamp should be cancelled. The second paragraph indicates the mode of cancellation, and requires that the head of the office should appoint an officer who is to effect the cancellation. If the two paragraphs of Section 30 are read together, it would appear that the direction to forthwith cancel the stamp on 'receiving' a document has reference to the receiving of the document in evidence and placing it on the record, and has nothing to do with the mere production of the document and its being marked for the purpose of identification. A perusal of Sections 138 to 144 of the Civil Procedure Code would lead also to the same conclusion."

(L. R. No. 994, dated 11th June 1891; *vide* G. R. No. 4232, dated 22nd idem.)

9. The Court or Office issuing copies, certificates, or other similar documents liable to stamp duty should, before issue, cancel the labels affixed to them by punching out a portion of the label in such a manner as to remove neither the figure-head, nor that part of the label upon which its value is expressed. As an additional precaution, the signature of the officer attesting the document, with the date, should be written across the label and upon the paper on either side of it as is frequently done by persons signing stamped receipts. (G. I., F. D., No. 3373, dated 24th September 1875; *vide* G. R. No. 5802, dated 14th October 1875.)

Note.—This ruling has been extended to all documents received in a Court by G. R., J. D., No. 5646, dated 11th September 1882; *vide* G. M. No. 6851, dated 3rd October 1882.

10. It should be laid down for the guidance of Treasury and other officers concerned, in making payments for which stamped receipts have to be taken, that in cases in which for any reason the stamps have not, in his opinion, been properly cancelled by the persons tendering the receipts, the officer receiving the documents should either punch the stamp or cancel it himself by inscribing his initials and the correct date of cancellation on (not across) the stamp, or should see that they are properly punched or cancelled before recording the document.

As confusion might arise, owing to different native eras and dates being used in inscribing the date of cancellation, the English (Gregorian) date should be put with the month indicated, either by name or a figure denoting its order in the series of 12: thus the 7th May 1885 or 7-5-85. (G. Rs. Nos. 5993, dated 24th July 1884, and 8359, dated 23rd October 1884.)

11. In order to prevent the fraudulent re-use of one anna adhesive stamps affixed to hundis, the drawers of hundis should be required to cancel the stamps affixed thereto by writing across them the date of cancellation, in addition to their signatures. This measure is within the provisions of Section 11 of the Stamp Act, 1879, and is not likely to cause any inconvenience to bankers or to the public in general. The Collectors should issue the requisite notifications in English and in the vernacular languages, giving publicity to these instructions and at the same time cautioning the purchasers of hundis against the risk which they incur by accepting documents to which used stamps are affixed, and enjoining on them the necessity of carefully examining such stamps. (G. R. No. 3369, dated 22nd May 1882.)

12. "The only legal means by which the public revenue can be protected against the probable results of non-cancelment or of insufficient cancelment of adhesive stamps is the prosecution of offenders. This would direct public attention to the requirements of the law. But it would always be a matter of opinion as to what constitutes a cancellation sufficient to prevent stamps from being used again, and I would not recommend a prosecution in any case in which there has been a *bonâ fide* attempt to obey the requirements of the law, because no doubt a sufficient cancellation could be effected in many different ways. Any cancellation which prevents a stamp being used again, except by resort to a fraudulent imitation or reforming of certain written or stamped characters, would, I think, be held by the Courts to be a sufficient compliance with the Stamp Act." (L. R. No. 910, dated 7th July 1884; *vide* G. R. No. 5993, dated 24th idem.)

XVIII.—FRAUDS AND FORGERIES.

1. Instances of forgery or fraudulent use of any description of stamps, whether General, Judicial, Postal or Telegraph, coming to the notice of the

local authorities should be immediately reported for communication to the Government of India. Such reports should invariably be accompanied by full particulars as to the nature of the forgery or fraud perpetrated, and if possible by specimens, and should be forwarded immediately, with any remarks which occur to the Local Government, to the Government of India in the Finance Department. (G. I., F. D., No. 3635, dated 7th October 1875; *vide* G. R. No. 6079, dated 27th idem.)

2. Mere ordinary cases of the fraudulent use of postage labels—such, for instance, as the use a second time of an obliterated label—need not be specially reported to the Government of India, unless there is some peculiarity about the case which makes it important. The discovery of any *forged* postage labels should be immediately reported. (G. I., F. D., No. 545, dated 26th May 1876; *vide* G. R. No. 4211, dated 22nd July 1876.)

3. The Governor General in Council is willing to forego the report of cases of the fraudulent re-use of stamps, except when the circumstances are novel or important. But forgeries or fraudulent alteration of stamps should always be reported to the Government of India. (G. I., F. & C., No. 1970, dated 18th December 1879; *vide* G. R. No. 54, dated 6th January 1880.)

4. Mr. Pedler, Professor of Botany and Chemistry in the Presidency College, Calcutta, has been appointed by the Government of India as the special officer to examine forged stamps. He is to be paid a fee of Rs. 10 for each separate stamp sent to him for examination and report. References should not be made to him without the orders of Government, and no such reference is required or should be made except when the Chemical Analyser to Government is in doubt as to whether a stamp sent to him for examination is genuine or forged and considers a reference expedient. (G. R. No. 5286, dated 6th October 1880.)

5. A fraud against the stamp revenue was committed by certain inhabitants of Ahmedabad by intentionally allowing the stamps affixed to seven hundis payable at sight to remain uncancelled. The hundis were returned by post to the drawers with the stamps uncancelled, so that the stamps might be re-used. The perpetrators of the fraud were convicted of the offence and fined. The attention of heads of departments is invited to the measures recommended by the Superintendent of Stamps in the following extract from his administration report for 1882-83 to prevent a recurrence of frauds of this nature, and they are requested to pay particular attention to the necessity of strictly enforcing the provisions of Section 11 of the Indian Stamp Act, 1879 :—

"I would invite the attention of all Government officers (especially Revenue officers) to the fraud committed in this manner against the stamp revenue. Strict vigilance on the part of these officers and their subordinates in enforcing the provi-

sions of Section 11 of the Act whenever any instruments bearing adhesive stamps are executed before them, and constantly reminding the public of the penalties of the law by having an extract of Section 52 of the Act placed in a conspicuous position at the entrance of public offices and making an example of the offenders are, in my opinion, the best means of protecting the revenue against the re-use of adhesive stamps."

(G. R. No. 7360, dated 3rd October 1883.)

6. The practice of blank transfers obtains in England, and the Select Committee on Act I of 1879 decided not to interfere with the practice prevailing in India. Moreover, in the opinion of the Governor General in Council there is no transfer so long as the name of the purchaser is not inserted in the instrument and under the Indian Companies Act, VI of 1882, Schedule I, Table A (8), the execution of the instrument by the purchaser is necessary to effect a transfer or conveyance of the shares. A transfer in blank, therefore, is not a conveyance or transfer of shares within the meaning of Sections 27 and 63 of Act I of 1879. Under these circumstances the practice of transferring shares in blank does not appear to the Government of India a fraud on the revenue. (G. I., F. & C., No. 4245, dated 8th November 1883; *vide* G. R. No. 8691, dated 27th idem.)

XIX.—PROSECUTIONS AND PENALTIES.

1. The object of limiting the power of instituting prosecutions under the Stamp Act to Collectors of Stamp Revenue was to afford a security against vexatious and unnecessary proceedings. (G. R. No. 3159, dated 20th August 1868.)

2. Prosecutions under the Stamp Act should be resorted to only in those cases in which there is sufficient evidence of a fraudulent intention to evade payment of the proper stamp duty. (G. R. No. 3902, dated 5th June 1890.)

3. Official prosecutions of persons for selling court-fee stamps contrary to Section 34 of the Court Fees Act (VII of 1870), as amended by Act XII of 1891, should not be instituted without the sanction of the Collector of the District. (G. R. No. 3699, dated 27th April 1892.)

4. Whenever any public officer has reason to think that a conviction could be obtained under Section 63 of the Stamp Act, it is his duty to communicate with the proper authorities for this purpose. (G. R. No. 4003, dated 31st July 1880.)

5. If any instrument liable to stamp duty under the existing stamp law, and in which the value or amount of consideration money is expressed in Sicca rupees, be drawn on paper bearing a stamp insufficient to cover the same value or amount or consideration money if expressed in Government rupees, then every person or firm making, signing, issuing, accepting, endorsing, paying or receiving payment of such instrument, if it be of the nature of a bill

of exchange, promissory note, cheque or similar instrument, and any person making, executing, or signing otherwise than as a witness such instrument if it be of any other nature, is liable to the penalties provided in the case of frauds against the stamp revenue, and upon information will be prosecuted with the utmost rigour of the law. (G. R. No. 1063, dated 23rd February 1870.)

6. It having been brought to the notice of Government that a practice has been introduced of issuing post-dated hundis or bills, the object being apparently to evade stamp duty by thus making a hundi appear as a bill payable on demand, while in reality it is not so, the Governor General in Council deems it advisable to warn the public that as post-dated bills are not bills payable on demand, they require a stamp prescribed for bills payable otherwise than on demand, and that any person making, signing, issuing, or (except as provided in Section 26 of the General Stamp Act, 1869) accepting, endorsing, paying or receiving payment of any such bill, without the same being duly stamped, will be liable to the penalties provided in Section 29 of the said Act. (G. I. Notn. No. 1264, dated 28th February 1871, republished in the *Bombay Government Gazette*, dated 9th March 1871, page 295.)

7. Local officers should watch carefully against the practice of post-dating hundis or bills in order to evade payment of stamp duty, and institute prosecutions in all cases in which convictions can be obtained under the Stamp Act. (G. I., F. D., No. 4045, dated 25th November 1872; *vide* G. R. No. 6006, dated 5th December 1872.)

8. The policy adopted by the Legislature in Act 1 of 1879 with respect to instruments of exchange, gift and partition is to make the amount of stamp duty leviable upon such instruments depend upon the value of the property concerned *as set forth in the instruments* (*vide* Schedule I, Articles 35, 36 and 37). By Section 27 of the Act it is provided that all facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein, and Section 63 renders failure to comply with this requirement a punishable offence. The means chosen by the Legislature for securing generally a proper valuation is the prosecution of persons who, with intent to defraud the Government of any duty, understate or neglect to state the value of the property in any instrument to which they are parties. Whenever, therefore, any public officer has reason to think that a conviction could be obtained under Section 63 of the Stamp Act, it is his duty to communicate with the proper authorities for this purpose. (L. R. No. 875, dated 17th July 1880; *vide* G. R. No. 4003, dated 31st idem.)

9. If a promissory note or bill of exchange is not stamped in accordance with the provisions of Sections 5, 16, 18 and 44 of the Stamp Act of 1879, the

defect cannot afterwards be remedied, and the document cannot be admitted in evidence. This is clear from Section 34. The Collector is not entitled to demand the stamp duty which ought to have been paid on such an instrument.

The Collector is not bound to prosecute in every case in which he finds that a promissory note or bill of exchange has not been duly stamped. Under Section 61, a person drawing, &c., &c., a bill of exchange or promissory note without the same being duly stamped, is liable to the penalty provided in that section, whether there was any intention of evading the stamp laws or not, but there is nothing in the Act which compels the Collector to enforce the penalty in every case. (Adv. Gen. No. 92, dated 2nd October 1882; *vide* G. R. No. 7569, dated 30th idem.)

10. The receipt which a person is required to give by Section 58 of the Stamp Act is a "duly stamped" receipt, and looking to the definition of the term "duly stamped" in Section 3, clause (10) of the Act, it is clear that the requirement cannot be applicable to an instrument which the law in force does not require to be stamped or to be written upon paper bearing an impressed stamp. The refusal, therefore, of a landlord to give a receipt for payment of rent by a cultivator which does not require a stamp under Article 15 (*c*) of Schedule II cannot make the landlord liable to a criminal prosecution under the provisions of Section 64, the object of which is to protect Government from the loss of revenue through intentional evasion of stamp duty. (L. R. No. 1627, dated 14th December 1882; *vide* G. R. No. 236, dated 11th January 1883.)

XX.—REWARDS.

1. It has been brought to the notice of Government that a practice obtains in certain districts of this Presidency of evading the stamp law by drawing hundis ostensibly payable at sight and affixing thereto a one-anna stamp, although the hundis are in reality not payable at sight, but after a certain number of days indicated in the corner thereof. His Excellency the Governor in Council is, therefore, pleased to notify, for general information that any person affording such information as will lead to the conviction of any person so offending will receive half of the fine imposed, unless the Magistrate trying the case for reasons recorded by him thinks fit to withhold the reward. (G. N. No. 6213, dated 21st October 1881.)

2. Whereas it has been brought to the notice of Government that certain Márvádi firms carrying on exchange business in the Native Town of Bombay have made it their practice to obtain foreign bill stamps from other towns where such stamps can be purchased by merchants at a higher rate of discount; and whereas such stamps have been introduced into Bombay and unlawfully sold by means of private

agents or through licensed stamp vendors in league with the aforesaid persons; and whereas certain persons have been prosecuted and convicted before the Magistrates for selling without a license such stamps in contravention of the provisions of Section 68 of the Indian Stamp Act, 1879 (Act No. I of 1879);

Notice is hereby given, for general information, that His Excellency the Governor in Council, in exercise of the power conferred by Rule 18 of the Rules made under Section 9 of the Indian Stamp Act by the Government of India, and published in their Notification No. 1288 of 3rd March 1882, at page 195 of Part I of the *Bombay Government Gazette* of 16th March 1882, is pleased to direct that any person who shall furnish such information as shall lead to the prosecution and conviction of any offenders in the manner herein above described against the said provisions of the Stamp Act, shall receive a reward equal to one-half the fine imposed, unless the Magistrate trying the case shall see fit, for reasons recorded by him, to withhold such reward. (G. N. No. 7711, dated 3rd November 1882.)

3. With reference to No. 19 of the rules made under the Indian Stamp Act, 1879, by the Governor General of India in Council and published in the Government of India's Notification No. 2170,* dated 22nd May 1891, the Governor in Council is pleased to direct that the limit of the reward which any Magistrate convicting an offender under Chapter VIII of the said Act may grant to any person who may have contributed to the conviction shall be one-half of the amount of the fine, if any, which the Magistrate imposes on the offender. (G. N. No. 385, dated 19th January 1892.)

*Printed at pp. 314 *et seq.* of the Compilation of General Rules.

Note.—Whenever a Magistrate chooses to sentence an offender to imprisonment only, it may be taken as a case in which he for some reason withholds the reward. (G. R. No. 385, dated 19th January 1892.)

XXI.—ACCOUNTS.

1. The cost of service postage stamps, purchased by District Officers in their Revenue and Magisterial capacities, should be debited one-fourth to Law and Justice and three-fourths to Land Revenue.

Whenever the cost of an establishment is divided between two heads, the charge for service postage labels may be divided in the same proportion, care being taken to secure every possible economy. (G. I., F. D., No. 661, dated 29th January 1874; *vide* G. R. No. 1730, dated 1st April 1874.)

2. Officers will be held personally responsible for the safe custody and proper application of service postage stamps entrusted to them. (G. Rs. Nos. 6663, dated 17th December 1874, and 1445, dated 6th March 1877.)

3. In reviewing the Administration Report of the Stamp Department of the Presidency of Bombay for the year 1876-77, the Secretary of State for

India observed that "it seemed important that the receipts for general stamps should be shown separately from those for court-fee stamps, and, also, that by apportioning the charges between the two classes, the gross and net revenue from each class should be clearly exhibited in future reviews of the Annual Stamp Administration Reports."

The various Local Governments who were consulted on the subject concurred in the opinion that the charges on account of judicial and non-judicial stamps should be divided in proportion to the amount of revenue raised from each, it being understood that such charges as could be traced directly to either source of revenue should continue to be charged against that source. The Governor General in Council has accordingly directed that this plan should be followed, and that a statement, such as is desired by the Secretary of State, should be appended to each annual report upon the stamp revenue, whether such report be separate or included in the General Administration Report. (G. I., F. D., No. 299, dated 30th April 1879 ; *vide* G. R. No. 2592, dated 15th May 1879.)

4. Separate accounts should be kept of service and ordinary stamps. No alteration in the form in use is necessary, all that is required being to enter in distinct books the transactions in each class of stamps. (G. R. No. 7022, dated 23rd November 1881.)

XXII.—FEES.

1. It is not within the competency of a Local Government to order that fees levied under Act VII of 1870 shall be levied in cash and not in stamps ; *vide* Section 25 of the Act. (G. I., F. D., No. 231, dated 18th January 1877 ; *vide* G. R. No. 534, dated 27th idem.)

2. All process fees in all Courts should be levied by means of stamps.

(2) This does not apply to process fees levied under the Registration Fee Table. There is no objection to such fees being levied in cash and credited to the Registration Department. (G. Rs. Nos. 76, dated 6th January 1873, and 1151, dated 4th March 1878.)

Note.—The Government of India in their Resolution No. 4820, dated 20th September 1889, rejected a proposal made by the Government of Bengal that fees for the registration of documents and fees payable under Acts III of 1877, VI of 1882 and VIII of 1885 should be paid in stamps instead of in cash. (G. R. No. 7462, dated 3rd October 1889.)

XXIII.—REGISTERS OF COURT FEES.

1. Registers are to be kept of all court fees received by every description of officer. (G. R. No. 1758, dated 12th April 1871.)

2. There should be maintained for each Court a register, in the following form, of the fees levied under Chapter IV and of those levied under the different articles of Schedules I and II of the Court Fees Act :—

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[FOR CIVIL COURTS.]

I.

Daily Register of Court Fees realized in the Court of the

Date.	Process Fees.		Amount realized under Act VII of 1870, Schedule I, Articles 1 to 9 inclusive.		Amount realized under the same Schedule, Nos. 10 to 12.		Amount realized under Schedule II.		Total.		Remarks.
	Rs.	a.	Rs.	a.	Rs.	a.	Rs.	a.	Rs.	a.	

[FOR REVENUE AND CRIMINAL COURTS.]

II.

Daily Register of Court Fees realized in the

Date.	Process Fees.		Other Fees.		Total.		Remrks.
	Rs.	a.	Rs.	a.	Rs.	a.	

It is to be observed that the entries are not to be made in detail, but only so as to show, in the case of the Civil Courts, the aggregate value of the stamps filed in the Court during each day under each of the four classes indicated, and in the case of the Criminal and Revenue Courts the total daily receipts from process fees and other fees. The entries should be initialled daily by the presiding officer. (G. I., F. D., No. 3335, dated 21st September 1877; *vide* G. R. No. 6108, dated 10th October 1877.)

3. There seems no reason why officers of the Salt and Customs Departments should be exempted from the obligation of keeping registers of court-fee stamps, but, to save clerical labour, only stamps of the value of more than one anna should be entered in detail, and the total number of one-anna stamps received in the day should be entered in one item at the end. (G. R. No. 4568, dated 6th June 1885.)

4. It is incumbent on all Revenue officers to keep a register of court fees received by them, and Government see no reason to make an exception in favour of the Forest Department. (G. R. No. 2150, dated 7th April 1888.)

5. The registers of court-fee stamps kept in the Courts and offices subordinate to the Revenue Department should be preserved for six years. (G. R. No. 8624, dated 19th December 1887.)

XXIV.—STAMP LAW IN RELATION TO NATIVE STATES, CHIEFS, &c.

1. The Court Fees Act,* 1870, and the Stamp Act, 1879, extend to the whole of British India. These Acts are not in force in Native States, and Government has no interest in their stamp revenue. Within the limits of a Native State, copies of public documents in cases disposed of by Political Officers in their capacity as such are, no doubt, furnished according to the practice prevailing in such State. Beyond those limits and within British territory the *lex loci* must be followed, and that law makes no distinction in favour of public records of the description alluded to. (L. R. No. 16, dated 4th January 1882; *vide* G. R. No. 391, dated 19th idem.)

2. An agreement in the nature of a treaty between an independent State and the Paramount Power is not affected by the British Indian stamp law and, therefore, does not need to be stamped in accordance therewith. (L. R. No. 507, dated 8th April 1884; *vide* G. R. No. 3814 A, dated 12th May 1884.)

3. The rules† framed under the Pensions Act of 1871 apply to Kárkúns of the Treaty Jághirdárs presenting themselves to receive payments of amals from the Poona Treasury in British India, and accordingly stamped powers of attorney are required. The only question which remains is whether the British Government should pay the stamp duty. A decision does not rest on considerations of dignity, but on general principles. If a foreign Chief sues in a British Court, he must follow the laws of the land in which the Courts are situated. There is nothing derogatory to his dignity in so doing, and the principle is the same in regard to the transactions in question. Government, therefore, see no reason for granting any exemption in regard to the payment of these amals, even if the law empowered them to do so. (G. R., P. D., No. 7646, dated 22nd November 1887; *vide* G. M. No. 8646, dated 20th December 1887.)

†Printed at pp. 295 *et seq.* of the Compilation of General Rules.

4. No public functionary can exercise the authority he derives from law, save on the terms and conditions imposed by that law. When an application

* The Court Fees Act came into permanent operation in Aden on 1st April 1876. (G. N., J. D., dated 14th October 1876, published at page 956 of the *B. G. G.*, dated 19th idem.)

made to British Courts or officers is such, that a particular form, stamp, or procedure is required by law, the functionary is not at liberty to dispense with, and thus to proclaim himself superior to, the law. So also on the part of the applicant, his application implies, for the purpose in hand, a submission to the law, and to the system of law with its accessories which he invokes, and he cannot, as an applicant or suitor, demand terms differing from those prescribed by law. Whenever, therefore, a Chief, Tálukdár, or any person of rank, invokes the authority of a British officer, especially on account of property situated, or transactions effected, in British territory, he must do so subject in every respect to the laws and regulations applicable to British subjects.

If a foreign Chief sues in a British Court, he must follow British laws. There is nothing derogatory to his dignity in invoking that law, and if he does so, he must follow its directions. All exemptions which have hitherto been allowed contrary to law must, therefore, cease. (G. R., P. D., No. 2740, dated 17th April 1888; *vide* G. M. No. 3223, dated 21st May 1888.)

5. As the provisions of the Stamp Act do not apply to the Jawhár State, no British stamp duty can under that Act be levied on tapping licenses executed within the limits of that State. (G. R. No. 4836, dated 20th July 1888.)

6. "The question referred for my opinion by Government memorandum No. 6605 of 3rd October 1888 is whether the British A'bkári Inspector in the Jawhár State can receive and act upon an application received in that State in respect of which the fees leviable under the Court Fees Act have not been paid.

"2. I have the honour to report my opinion that the Court Fees Act has *ex proprio vigore* no extra territorial force, and that, therefore, the applications may be received in the Jawhár State without court fees.

"3. The right to require such court fees on such applications may have been conceded in the special agreement with the Rája of the State, or may possibly be inferred from his 'active assent or silent acquiescence,' but without seeing the agreement I am unable to say whether it empowers the British Government to annex what conditions it pleases to the grant of ábkári licenses and applications.

"4. But whether he has the power to require court fees or no, I think that there can be no doubt that the A'bkári Inspector is not *bound* to require court fees on applications presented to him in the Jawhár State." (L. R. No. 191, dated 15th February 1889; *vide* G. R. No. 1614, dated 27th idem.)

XXV.—INTERPRETATIONS; JUDICIAL RULINGS; AND LEGAL OPINIONS.

1. With reference to clause (1)* of Section 15 of Act XVIII of 1869 (the General Stamp Act), which

**Vide* Article 15 (c) of Schedule II of Act I, 1879.

provides for the exemption from duty of receipts or discharges granted to cultivators of inám lands in the Bombay Presidency, the Collectors are informed that the widest construction may be given to the term Inám, and that it may be held to include all lands held partially exempt from the payment of land revenue. (G. C. No. 4545, dated 22nd October 1869.)

2. The Tálukdári Settlement Officer having raised the question whether a Tálukdár or other landholder, when petitioning for assistance to collect his rent, should be required to make a separate application on a separate stamp for each tenant's case, or whether he may put as many as he can into one paper, taking care to cover an amount above Rs. 50 by the larger stamp required, it was ruled that as the Court Fees Act does not limit the subject-matter of an application or "petition," the fee on which is regulated by Article I, Schedule II of the Act, a petitioner is at liberty to introduce more than one matter or case into an application or petition. (G. R. No. 2818, dated 4th June 1874.)

3. Every document 'issued, received, or attested by an officer engaged in making a settlement or revision of settlement of land revenue, and which forms part of the record of such settlement' (Act VIII of 1871, Section 87,* clause *a*), is not necessarily a 'statement.' A notice issued under the Survey or City Survey Act, for instance, or a deed of sale, or a mortgage deed, or a copy of any such deed received and recorded by a Survey Officer, is not a 'statement' within the meaning of Article 9, Schedule I, Act VII of 1870. The truth is that each document must be judged of by its particular nature, and no general rule can be laid down as to all documents of which copies may be obtained under clauses (*a*), (*b*) and (*c*) of Section 87, Act VIII of 1871.

*Cf. Sectio 90 (*a*) of A III of 1877

Clause (*c*)† of the said Section 87, Act VIII of 1871, has, it is believed, no applicability in this Presidency. It relates to 'documents *which under any law for the time being in force* are filed periodically in any revenue office by patwáris or other officers charged with the preparation of village records.' There is apparently no law in force which requires a Taláti or Kulkarni (the 'officers charged' in this Presidency 'with the preparation of village records') to file periodically any document in any revenue office. If there are any documents which are so required to be filed, it is wrong to suppose that the clause only relates to documents filed 'in a Taláti's daftar;' it relates to documents filed 'in any revenue office.' (L. R. No. 126, dated 20th February 1877; *vide* G. R. No. 1328, dated 28th idem.)

†Cf. Act I 1877, Sec 90, clause

4. In Government Resolution No. 233, dated 14th January 1878, Judicial Department, it was laid down that unauthenticated copies of proceedings of Sessions Courts needed for official use should, when possible, be made by clerks in the office of the District Magistrate; and in his report, cited in the preamble of that Resolution, it was remarked by the Legal

Remembrancer that for actual departmental purposes, the Sessions Judge would no doubt always cause the necessary copies to be prepared in his office.

(2) The same order and remarks are applicable to Magisterial proceedings.

(3) It has been held by the High Court that Article 9, Schedule I of Act VII of 1870 applies only to certified copies of papers (see foot-note at page 392, West's Code, Volume IV). For all inter-departmental and official purposes uncertified copies suffice. (L. R. No. 97, dated 21st January 1881; *vide* G. R. No. 681, dated 1st February 1881.)

5. The Government of India is advised that there is nothing in the law to vitiate an instrument partly written on the reverse side of an impressed stamped paper. Section 12 of the Indian Stamp Act, 1879, however, requires the stamp to appear on the face of the instrument; so that it is necessary that part of the instrument should be written on the side of the paper which bears the stamp impression. (G. I., F. & C., No. 917, dated 28th February 1881; *vide* G. R. No. 1418, dated 9th March 1881.)

6. The stamp rules do not prohibit the writing on the reverse side of a sheet of stamped paper endorsements by stamp vendors or by Civil Courts on documents presented to such Courts as exhibits. (G. I., F. & C., No. 1137, dated 12th March 1881; *vide* G. R. No. 1718, dated 24th idem.)

7. "The document in question is a will in which the testatrix states that so long as she is living it will not be competent to her to dispose of the property. I do not think that the language employed can be held to amount to a distinct agreement, because looking to the voluntary nature of a will it could not, I think, be construed into anything more than an expression of the present determination of the testatrix not to dispose of any part of the property before her death. The instrument is in its principal intention a will; the mere incidental allusion which it contains to the views of the testatrix as to her own future power over the property, or as to her intention with regard thereto, cannot, in my opinion, afford sufficient reason for regarding it as anything more than a will." (L. R. No. 400, dated 29th March 1881; *vide* G. R. No. 2124, dated 12th April 1881.)

8. Under the ruling of the High Court of Bombay given at page 188 of the Indian Law Reports, Bombay Series, Vol. V, there is no legal objection to the agreements of the principal and his surety being written on one and the same stamp paper, and treated as one instrument, and not as two separate agreements, each chargeable with stamp duty. (L. R. No. 669, dated 12th June 1882; *vide* G. R. No. 4391, dated 8th July 1882.)

9. A question having been raised by a Collector as to the procedure to be followed in determining the value of the property settled in a deed of settlement

so as to fix the stamp duty leviable, the following opinion was recorded by the Remembrancer of Legal Affairs :—

"The proper stamp duty should be adjudicated by the Collector under the provisions of Chapter III of the Indian Stamp Act, 1879.

"There is no fixed rule for determining the valuation of immoveable property for the purposes of stamp duty; but in Schedule B of Act XXVI of 1867 (repealed by Act X* of 1877) special rules for determining the market-value of immoveable property were given. The general rule was that twenty times the annual net profits of such property shall be deemed to be the market-value thereof, unless and until the contrary shall be proved; but in the Bombay Presidency, this valuation was reduced one-half for unalienated land brought under a settlement, and in the case of alienated land was reduced in proportion to the amount of assessment exempted.

* Repealed by Act XIV of 1882.

"In the valuation of suits for the fiscal purpose of court fees, fifteen times the annual assessment has been fixed as the rule for ascertaining the value of an alienated village.

"An instance of low valuation may be mentioned in the case of the purchase of a Zamindár's proprietary rights by Government for the payment of his debts. In the Jhánsi Encumbered Estates Act, 1882, the valuation for the purposes of purchase by Government is estimated to be a sum amounting to ten times the net annual profits of the Zamindár.

"In the present instance the Collector may safely follow the method of calculation which was formerly in use in accordance with Rule 3 of the special rules for the Bombay Presidency given in Schedule B of Act XXVI of 1867."

(L. R. No. 1221, dated 13th September 1882; *vide* G. R. No. 6947, dated 6th October 1882.)

10. The language of clause (*b*), Article 13 of Schedule II of Act I of 1879 exempts all leases executed in the case of a cultivator without the payment or delivery of any fine or premium, whatever the reserved or annual rent may be, provided it be for a definite term not exceeding one year, and also whatever the term may be, provided the annual rent reserved does not exceed Rs. 100. (High Court's Judgment in Civil Reference No. 33 of 1882; *vide* G. R. No. 5231, dated 5th August 1882: and G. I., F. & C., No. 3928, dated 23rd September 1882; *vide* G. R. No. 7033, dated 9th October 1882.)

11. Parties to transactions relating to land or other immoveable property are at liberty either to dispense altogether with written documents recording such transactions, or to give and take such instruments as they mutually agree upon. In the Presidency town and its neighbourhood, people are influenced considerably by English lawyers, who delight in inflicting upon their clients long formal documents at every stage of their dealings in immoveable property. In the mofussil the much more simple forms of native origin are still adhered to, and as a rule they answer their purposes excellently.

It is not competent to the Executive Government to intervene to render it necessary for people in the mofussil to follow the practice in vogue in the Presidency towns.

Stamp duty is payable only when instruments liable thereto are executed, and if parties, in order to avoid expense, do not execute any instrument, or, when there is a choice, execute the one on which the smallest amount of stamp duty is payable, it cannot be said that they thereby evade payment of stamp duty. (L. R. No. 546, dated 26th April 1883; *vide* G. R. No. 3987, dated 25th May 1883.)

12. "The 'distinct matters' referred to in Section 7 of Act I of 1879 means matters of different kinds, such as an agreement for service and a lease which cannot blend into one or at any rate are not so intended or conceived by the parties that they can be regarded as merely parts of a single aggregate. When lots are bought in an auction room, the contract for each is essentially separate, and thus a separate agreement duty is properly chargeable on each, even though the memoranda be written collectively on the same paper. But, when passing beyond the stage of contract *in fieri*, we reach that of a transfer of ownership, the intention on both sides centres in a single transaction, if the subject-matter admits of it. Now, different areas when contiguous naturally merge into a single area except so far as they are artificially distinguished, and no artificial distinction is involved in the transfer of an aggregate area, though there would be such a distinction in the conveyance of separate lots. A single conveyance may, therefore, give full effect to a sale made between the same persons in several lots. If the lots are not contiguous, they could not coalesce in the same way, and would properly be the subjects of several conveyances. Hence so far as the lots in this case passing from the same owner to the same purchaser are contiguous and would, therefore, be comprised in one conveyance, they should be comprised in one certificate of sale. Where this contiguity fails, as separate conveyances would be used, separate certificates should be used. The stamp duty in each case should be determined by the aggregate amount of the purchase-money of the property embraced in the certificate as it would be in the case of a conveyance of the same property." (High Court's Judgment in Civil Reference No. 31 of 1883, dated 20th August 1883; *vide* G. R. No. 7508, dated 8th October 1883.)

13. In the case of a conveyance of a right secured by a decree, and where the consideration for such conveyance differs in the amount from the amount for which the decree was passed, the stamp should be regulated by the amount of the consideration and not by the more or less hypothetical value of the bargain to the purchaser. Such a deed falls under Article 21 of Schedule No. I of the Stamp Act. It is not a transfer of any such interest as is mentioned in clause (*b*) of article 60 of Schedule I of the Act, and, therefore, the sub-clause (2) of that clause cannot apply. (L. R. No. 528, dated 12th April 1884; *vide* G. R. No. 3425, dated 28th idem.)

14. A lease was executed for a term of 20 years; the rent, Rs. 20 a year, was paid down in a lump

sum of Rs. 400 at the time of execution. A further proviso in the deed reserved a grain payment of 2 páyalis of wheat per annum to the lessor. The value of this was not shown, and the parties to the deed declared that owing to the time to which the lease was to run, and the fluctuations in prices which must take place in that period they could not attach a value to the grain payment. The stamp on the deed was Rs. 4, exactly sufficient to cover the rent paid down in cash in lump. The question was raised whether in such a case the parties to the deed had the right to claim the protection of Section 26 of the Stamp Act, the holder of the deed undergoing the risk attendant in cases contemplated by that section, or whether the registering officer to whom such deed was presented should impound it under Section 33 and send it under Section 34 of the Stamp Act to the Collector. The Remembrancer of Legal Affairs expressed his opinion that the approximate money-value of the grain ought, with reference to Section 27 of the Stamp Act, to be stated in the lease. (L. R. No. 528, dated 12th April 1884; *vide* G. R. No. 3425, dated 28th idem.)

15. Kabuláyats passed by khots of unsurveyed inám villages are not agreements executed respecting the occupancy of land and the payment of the land revenue therefor under the Land Revenue Code or any rules made thereunder within the meaning of Article 1 (*e*), Schedule II to the Government of India Notification No. 2897 S. R., dated 7th June 1894. (G. R. No. 6600, dated 13th August 1885.)

16. Where there is an absolute *bonâ fide* sale and conveyance, with a collateral agreement for repurchase and reconveyance on repayment of the purchase-money, the latter agreement does not legally cancel the original deed of sale and convert the sale into a mortgage; the reconveyance on the repayment of the original money should not, therefore, be considered a reconveyance of mortgaged property within the meaning of Article 53 of Schedule I of the Stamp Act. (L. R. No. 965, dated 11th August 1885; *vide* G. R. No. 6842, dated 22nd idem.)

17. "The question is whether the assignment of standing crops exceeding Rs. 20 in value comes under Section 58 of the Indian Stamp Act (I of 1879).

"That section provides that any person receiving in satisfaction of a debt any moveable property exceeding Rs. 20 in value shall on demand by the person *delivering such property* give a duly stamped receipt for the same.

"An assignment of property is not delivery. If in the case put by the Collector of Násik, P. valad T. should cut the crop and deliver it to the Márwádi, who would receive it in satisfaction of a debt, then Section 58 would apply.

"Again, the standing or growing crop would not be moveable property under Act I of 1879. There being no definition of moveable property in that Act, reference must be made to the General Clauses Act (I of 1868). Under this Act, moveable

property means property of every description except immoveable property, and immoveable property includes things attached to the earth or permanently fastened to anything attached to the earth. These also are the words found in the definition in the Registration Act III of 1877 with the following important addition—'but not standing timber, growing crops, nor grass.' The special mention of these properties in the Registration Act shows that otherwise they would be included among things attached to the earth or permanently fastened to anything attached to the earth. And it is admitted that in other Acts, such as Revenue and Penal Codes, growing crops would be regarded as immoveable property. Therefore it seems clear that growing crops are not moveable property under Section 58 of Act I of 1879, nor is an assignment of growing crops a delivery thereof." (L. R. No. 935, dated 4th August 1885; *vide* G. R. No. 7015, dated 29th idem.)

18. "There are three brothers, J., H. and B., sons of A.

"In a suit under Bombay Act III of 1876 before the Mámlatdár of _____ brought by H. against D., F. and others, B. was called as a witness and produced a book in which are three documents relating to a partition between the three brothers in Samvat 1934 (A. D. 1867). The Mámlatdár called these documents 'labhaváná dastávajo.' In Wilson's glossary, *lábhava* is given as 'casting lots for dividing the produce of a field.' Probably it may equally well be applied to casting lots for the partition of an estate, answering to the 'pána' so common in Káthiáwár. The Mámlatdár held that, in the absence of any regular stamped documents, these documents must be looked upon as the instruments of partition. He, therefore, impounded the book and sent it to the Collector.

"Correspondence ensued as to the value of the estate, and eventually the three brothers declined to pay any stamp duty or penalty, or to let the documents be stamped.

"The Collector is unwilling to order any prosecution, as he considers that there was no intention to evade the payment of stamp duty or to defraud the Government. The Government Pleader suggests that the pages on which the documents are written should be cut out of the book and impounded till the penalty and stamp duty are paid. The Collector hesitates to follow this course, as he holds that the documents not being registered are really waste paper.

"I think that the book may be returned to B who produced it. It is a mistake to suppose that these three documents are the counterparts of each other, or that the three documents specify the share of the property falling to the lot of each. A. indeed purports to give the details of the lands falling to B.'s share. B. purports to show the houses which have fallen 'to my share;' but it is not speci-

fied whose share. K. purports to show the details of lands and houses which have fallen 'to my share;' but it is not specified whose share. The third share is altogether unaccounted for. Not one of the documents is dated. Each simply says, the following are the lands or houses of the share in the partition of 1934 Jeth *vad* 4.

"I think it is doubtful whether individually or collectively they form an 'instrument of partition.' They are apparently memoranda of portions of a previous partition; and I do not think the fact that the three brothers and witnesses signed each document militates against this view. The Wághela Grássiás often draw up papers in this way." (L. R. No. 1203, dated 19th September 1885; *vide* G. R. No. 7985, dated 1st October 1885.)

19. Article 8, Schedule I of the Court Fees Act applies only to a copy which is (1) a copy of a document liable to stamp duty under the Indian Stamp Act, and (2) which is left by a party to a suit or proceeding in place of the original withdrawn. It does not apply to copies of documents on plain paper which are not produced in original by reason of their being entries in books or such as would not become void or useless by force of the decree. These copies are not certified copies, and the original documents not having been filed according to law, cannot be said to have been left in place of the original documents withdrawn as contemplated by Article 8. (L. R. No. 227, dated 17th February 1886; *vide* G. R. No. 1608, dated 27th idem.)

20. The following papers were circulated by Government to Commissioners, District Registrars, &c., for information:—

Letter from the Commissioner, S. D., No. S.R.-188, dated 3rd February 1886, to the Registrar of the Bombay High Court:—

SIR,—Under Section 46 of the Stamp Act I have the honour to forward the annexed copy of a deed, purporting to be a deed of adoption, with a translation thereof, and request you will be good enough to move their Lordships the Judges to determine what stamp duty the document is liable to under the Indian Stamp Act.

The deed may shortly be described as a deed of adoption purporting to bestow property of considerable value (the exact amount, however, is not specified in the document) on the adopted son.

The deed was drawn up on a stamp of Rs. 10. When the document was presented to the Sub-Registrar of Chiplún for registration, he impounded it as insufficiently stamped and forwarded it to the Collector of Ratnágiri for the adjudication of the proper stamp duty.

The Collector held that the document in question was properly stamped, inasmuch as the stamp duty for an "adoption deed" (Article 2, Schedule I of the Stamp Act) was the same as that prescribed for "an authority to adopt" (Article 38 of the Schedule), *viz.*, Rs. 10.

I am of opinion that the decision of the Collector is wrong. Under the Stamp Act, I think a "deed of adoption" as such is *not* liable to any stamp duty. The entry against "adoption deed" in the Schedule is "see instrument No. 38." Whereas whenever the Legislature intended a

particular document to be made liable to the same duty as prescribed for any other document, they have used the following words against it, *viz.*, "the same duty as" in column 2 of the Schedule (*vide* entry immediately above "adoption deed"). I notice also that whenever a document is liable to stamp duty it is separately numbered in the Schedule. "Adoption deed" is not so numbered.

It has been urged, however, that inasmuch as the document in question bestows upon the adopted son the property of an adoptive mother, it is an instrument of gift of a non-testamentary nature (Article 36 of Schedule I of the Stamp Act) and therefore it was necessary for the Collector to call upon the parties to the instrument to specifically state the value of the property affected thereby in order to determine the proper stamp duty to which the document was liable. This view of the nature of the document does not commend itself to me. It is admittedly a deed of adoption, and the incidental mention of the fact therein that the adopted son is the heir to the property of the adoptive parent ought not to be construed as changing the nature of the document. The very fact of his being an adopted son would make him heir to the property of his adoptive mother whether the fact was specifically mentioned in the deed or not. The property descends to him not by the deed but by *adoption* which is evidenced by the deed.

Again, it might be urged that the instrument is liable to stamp duty under Section 7 of the Stamp Act, as it relates to several distinct matters, *viz.* (adoption and gift of property).

The points to be considered under the section are :—

(1) whether the instrument comprises or relates to several distinct matters, or

(2) whether it is so framed as to come within two or more of the descriptions in the first Schedule.

These two questions need be separately considered only when the two or more matters comprised in an instrument are each chargeable with duty. In the present case, as shown above, the deed of adoption is not liable to any duty. It is therefore only necessary to see whether the present instrument which is admittedly a deed of adoption is a *deed of gift* as well.

I think the best test to determine this is to see whether, supposing the adoption to be illegal and invalid, the adopted boy would be permitted to claim the property mentioned in the deed, under it, *as a deed of gift*; or whether the mention of the conferring of the property upon him will be looked upon as a mere redundancy of expression and taken to be part and parcel of the record of adoption. If the former, the deed is of course liable to be stamped as an instrument of gift; if the latter, it is subject to no duty.

A careful perusal of the deed shows that it is a deed of adoption only. The only words in it which give it the colour of a deed of gift are "and have made you the owner of all the ancestral property." In construing these words the context must be considered. The word "and" in the above quotation deserves to be specially noted. It distinctly *connects* the ownership of property with the adoption and makes it dependent on it.

It thus appears to me that if the adoption were, owing to some flaw in it, declared invalid, no Civil Court would admit the claim of the adopted boy to the property under this deed as a *deed of gift*, and if it would not, why should the instrument be taken to be a "deed of gift" for the purposes of the stamp duty?

As the question is an important one, I submit it for an authoritative decision.

I have &c.,

(Signed) ARTHUR CRAWFORD,
Commissioner, S. D

JUDGMENT IN CIVIL REFERENCE NO. 5 OF 1886.

Krishnábái, widow of Rámchandra Amarsing Ráje. } Adopter.

Pratápji Rámchandra Ráje ...Adoptee.

Reference from A. Crawford, Esquire, Commissioner, Southern Division, under Section 46 of the Indian Stamp Act.

The document is a deed of adoption, and not a deed of gift. The Commissioner, Southern Division, seems to be right on this point. Whether the document, as a deed of adoption, requires to be stamped at all, is a question that does not really arise in this case. It bears a stamp of Rs. 10. The Collector says it is sufficient. The Commissioner does not consider it insufficient if it does require a stamp, but says it does not require any.

(Signed) C. SARGENT.
(Do.) NÁNÁBHÁI HARIDÁS.
(Do.) H. BIRDWOOD.

(G. R. No. 5835, dated 13th August 1886.)

21. Letters of administration are not a "judicial proceeding" within the meaning of Article 9, Schedule I of the Court Fees Act VII of 1870, and copies of letters of administration should, therefore, be charged with stamp duty under article 22, Schedule I of the General Stamp Act, and not with a court fee.

(L. R. No. 1532, dated 1st December 1886; *vide* G. R. No. 8714, dated 10th idem.)

22. "Following the ruling of the High Court of Calcutta in *ex parte Hill* (I. L. R., 8 Calcutta, 254), I should say that if the instruments A and B fall under Section 7 of the Stamp Act I of 1879, at all, paragraph 2 of that section applies to them. Speaking of an instrument which they said was intended to effect partly a lease and partly a usufructuary mortgage, their Lordships the Chief Justice and two Judges of that Court said :—

"'It seems clear to us that * * * * * the loan is the consideration for the lease and the lease is the consideration for the loan; and that neither part of the arrangement would have been complete without the other.

"'We, therefore, think it impossible to say that the instrument relates to two distinct matters within the meaning of the first clause of Section 7 of the General Stamp Act. That clause, in our opinion, relates only to transactions so distinct in their nature as to be capable of being carried out by two or more instruments instead of one, whereas here the contract is essentially one transaction. On the other hand, we think that the case falls within the second clause of Section 7, the instrument being one which answers two of the descriptions in the first schedule, and which is therefore chargeable with the highest duty which can be imposed on an instrument of either description.'

"But I do not think that these instruments do 'answer two of the descriptions in the first schedule.' One is a mortgage deed and the other a deed of sale. The one effects a mortgage and the other a sale of an interest in a joint estate, and each, therefore, naturally contains provisions regarding the joint management of the property. These provisions are incidental and supplementary to the main intention of the instruments, and cannot, I think, be rightly regarded as bringing those instruments

within the description of 'instruments of co-partnership'." (L. R. No. 1643, dated 21st December 1886; *vide* G. R. No. 108, dated 17th January 1887.)

23. Article 22 of Schedule I of the Indian Stamp Act must refer to copies of, or extracts from, records which a public officer is bound by law to keep. It is clear that the law in question must be the law for the time being in force in British India and not elsewhere. (Adv. Gen. Nos. 76, dated 21st August 1882, and 18, dated 2nd June 1887; *vide* G. Rs. Nos. 6007, dated 1st September 1882, and 4091, dated 5th July 1887.)

24. Occupants holding land under the terms of a survey settlement are persons holding temporarily settled land under direct engagement with Government as described in Schedule II, No. I (*a*), second clause, Court Fees Act, 1870. (L. R. No. 1560, dated 10th December 1887; *vide* G. R. No. 634, dated 28th January 1888.)

25. The following opinions of the Honourable the Advocate General, Bengal, dated 19th October 1887 and 8th February 1889, were communicated by the Government of India for information and guidance, with an intimation that as the 'sattas' appeared to vary in form in different localities, these opinions should in any particular case be carefully considered with reference to the form of 'satta' actually used :—

"A 'satta' attested by a witness, and executed for the delivery of cotton on a certain day, is a 'bond' within the meaning of Section 3 (4) of the Stamp Act, 1879, and, as such, is liable to stamp duty. I am further of opinion that the transfer of a 'satta' of the above description is a transfer under Article 60 (*b*); and having regard to the change effected by the Stamp Act, 1879, in the liability of a 'satta' (which falls within the description of a bond) to bear a stamp duty, Notification No. 3226 of 22nd May 1874 is no longer applicable.

"A receipt given for earnest money is liable to stamp duty under Article 52 of Schedule I.

"As regards indigo 'sattas,' I would point out that the form in which they are said to be drawn would not constitute them bonds in England, and unless attested they would not be bonds under the Stamp Act. If unattested, an indigo 'satta' would be a covenant with a penalty attached (*i. e.* an agreement to deliver a certain quantity of indigo, and in the event of non-delivery to pay damages).

"However I am of opinion that the penalty named in a bond is the sum upon which the stamp duty is payable." (Opinion dated 19th October 1887.)

"The satta set out in this case is not a bond as held by the High Court (Section 8, Indian Law Reports, Calcutta, page 284). This decision is at variance with the decision in Indian Law Reports 2, Allahabad, page 654, which had been previously passed. In Bengal the decision of the High Court at Fort William must be followed, and consequently the satta or indigo contract under notice only requires an 8 anna stamp.

"My previous opinion, dated 19th October 1887, should not have been applied to the present case. I was then advising in a North-Western case and upon an agreement of a different kind, the purport of which was stated, but the document not placed before me, and in the case itself it was admitted that the document was a bond.

"According to the decision in Indian Law Reports, 2 Allahabad, page 634, the document as to which I was then asked to advise would be a bond liable to stamp duty on the penalty.

"In a portion of my previous opinion I stated that the penalty named in a bond is the sum upon which the stamp duty is payable. This would be so in reference to a bond mentioned in Article 14 (*a*) of Schedule (I), and the proposition is also correct in reference to the bond I was then advising on. But the language used by me, apart from the case on which I advised, would be applicable to simple money bonds, with penalties attached; and in this respect my opinion is not correct. The penalty in a simple money bond is introduced for the purpose of enabling the lender to realise principal and interest, and may be said to be in that sense the amount secured. Section 23 of the Stamp Act shows that interest may be left out of consideration, and the principal be deemed the amount on which the stamp is leviable. Read by the light of this section, the amount secured would be the principal amount lent, and not the penalty. To this extent the language used by me would require modification. I should have used the words 'the bond' instead of the expression 'a bond'." (Opinion dated 8th February 1889.)

(G. I., F. & C., Nos. 6509, dated 9th December 1887, and 2280, dated 6th May 1889; *vide* G. Rs. Nos. 169, dated 9th January 1888, and 3985, dated 1st June 1889.)

26. "The District Judge, Kánara, raises the questions—

(*a*) whether a Subordinate Magistrate is entitled to a fee on an affidavit sworn before him;

(*b*) whether any stamp should be affixed to the affidavit, and if any, of what value.

"The Honourable Mr. Naylor's report No. 52 of 8th January 1887, in which Government have expressed their concurrence,* points out that it is open to Government to charge fees for certain services performed by their officers, such as the attestation of documents and affidavits, wherever the performance of such services is not part of the duties of such officers imposed on them by law.

* Government Resolution No. 429, Judicial Department, dated 21st January 1887.

"Government accordingly extended to affiavits the provisions of paragraph 4 of Government Resolution No. 2308 of 12th June 1871.

"That paragraph authorises public officers of the class mentioned in the preceding paragraphs of the Resolution to take a fee of one rupee in the shape of a stamp, which should be affixed and obliterated.

"The preceding paragraphs of the Resolution include Magistrates.

"The Resolutions taken together appear to be unambiguous. The fees to be taken under them are not stamp duties or court fees, but mere charges for the services which Government allows its servants to perform for the convenience of the public, though they are not bound by law to perform them.

"I need hardly note that as the Resolution is not based on the Court Fees Act, 1870, or Indian Stamp Act, 1879, it does not affect, and is itself

unaffected by, the provisions of Section 6 of the former Act, or Section 34 and Schedule II, Article 1, of the latter Act. (Section 6 of VII of 1870 and Section 34 of I of 1879 render inadmissible in Courts of Justice any document or instrument not stamped as required under the schedules to those Acts. Schedule II of I of 1879 exempts from stamp duty affidavits used for certain purposes.)

"Therefore, on the one hand, the non-payment of a fee, chargeable under the above Resolutions on an affidavit, could not affect its admissibility, and on the other, the exemption of an affidavit from stamp duty under the Stamp Act does not disentitle Government to charge a fee for the services of the officer who attests the affidavit, a service which he is not *bound* by any law to perform." (L. R. No. 88, dated 21st January 1889; *vide* G. R., J. D., No. 853, dated 14th February 1889, and G. M. No. 2001, dated 14th March 1889.)

XXVI.—MISCELLANEOUS.

1. *Stamps on petitions to Government.*—Court-fee stamps of arbitrary values which are sometimes affixed to petitions through ignorance or misunderstanding of the Stamp Act and the standing orders of Government on the subject, by petitioners petitioning Government in regard to matters other than civil, should always be returned to them with an intimation that such return has been made. (G. R. No. 2580, dated 21st April 1877.)

2. The Superintendents of the Revenue, Financial and General Departments are held strictly responsible that all uncancelled stamps affixed to petitions to Government received in their respective branches are duly returned to the petitioners, as required by Government Resolution No. 2580, dated 21st April 1877, and that all stamps which are legally affixed, if there are any such, are properly defaced. (G. C. No. 213, dated 13th January 1879.)

3. *Removal of Stamps.*—Officers removing stamps from papers which do not require stamps, or from papers overstamped, should affix their initials to the paper. (G. R. No. 3766, dated 17th July 1879.)

4. *Publication of Translations.*—Care should always be taken to publish promptly any notifications or amended rules under the Indian Stamp Act; and to enable the Oriental Translator to do this, the Superintendent, Government Central Press, should furnish him with English slips of such notifications or amendments as they are issued. (G. R. No. 4085, dated 5th August 1879.)

5. *Stamping on Skeleton Forms.*—It is not expedient that the value of the one-anna stamps impressed on skeleton forms should be received in cash at the General Stamp Office, Bombay. This course would entail certain responsibilities on the Superintendent of Stamps, which it is considered desirable should not be imposed upon him, and might also open a door for fraud. The documents to be stamped should,

on presentation to the Stamp Office, be accompanied by a receipt from a Government Treasury for the full value of the stamps to be impressed. The Secretary and Treasurer, Her Majesty's Treasury, Bank of Bombay, should receive from the public the amount paid on account of the one-anna stamp and pass to them a receipt for the same to be presented at the Stamp Office along with the documents required to be stamped. (G. R. No. 2377, dated 11th April 1882.)

6. *Sureties.*—Government do not consider it desirable to insist upon the lodgment of title-deeds or to require a deposit of promissory notes or cash by the sureties for the Storekeeper of the Bombay Stamp Office. It will suffice if the Superintendent of Stamps satisfies himself fully that the sureties are solvent and able to pay the amount for which they are liable, and ascertains carefully at intervals of not more than a year that the security furnished is sufficient. (G. R. No. 2550, dated 19th April 1882.)

7. *Forest Agreements.*—The Forest Department is authorised to have a limited number of the printed forms of contract agreement to be entered into with coupe contractors embossed with an eight-anna stamp by the Superintendent of Stamps, Bombay, and to keep the forms in stock to meet the requirements of the service. (G. R. No. 8702, dated 4th November 1892.)